

United States
Circuit Court of Appeals
For the Ninth Circuit.

ACHILLE BIANCHI and
MARLO PACKING CORPORATION,

Appellants,

vs.

ARTHUR E. H. BARILI,

Appellee.

ARTHUR E. H. BARILI,

Appellant,

vs.

ACHILLE BIANCHI and
MARLO PACKING CORPORATION,

Appellees.

Transcript of Record

Upon Appeals from the District Court of the United States
for the Northern District of California,
Southern Division

FILED
DEC 24 1947

PAUL P. O'BRIEN,
CLERK

No. 11769

United States
Circuit Court of Appeals
For the Ninth Circuit.

ACHILLE BIANCHI and
MARLO PACKING CORPORATION,
Appellants,

vs.

ARTHUR E. H. BARILI,
Appellee.

ARTHUR E. H. BARILI,
Appellant,

vs.

ACHILLE BIANCHI and
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Affidavit of Alan Franklin, Supporting Motion for Relief from Judgment	17
Affidavit of W. Bruce Beckley, Supporting Mo- tion for Relief from Judgment.	16
Answer	5
Appeal:	
Certificate of Clerk to Transcript of Rec- ord on	41
Cost Bond on.	30
Designation of Contents of Record on.	33
Notice of.	29, 36
Plaintiff's Designation of Contents of Rec- ord on	38
Statement of Points on Which Appellants Intend to Rely on.	188
Statement of Points on Which Appellant Barili Intends to Rely on.	191
Certificate of Clerk to Transcript of Record on Appeal	41
Complaint for Infringement of Letters Patent No. 1,844,142	2
Cost Bond on Appeal.	30
Designation of Contents of Record on Appeal.	33

INDEX	PAGE
Exhibit (Defendants') C—Excerpt from file wrapper of United States Patent Office in the matter of the Letters Patent of Arthur E. H. Barili, No. 1,844,142, granted 2/9/32, for Improvement in Stuffed Pastry Machines	156
Final Decree	14
Final Judgment.....	27
Findings of Fact and Conclusions of Law.....	23
Conclusions of Law.....	25
Findings of Fact.....	24
Interrogatories of Defendants Achille Bianchi and Marlo Packing Corporation, and Answers Thereto	8
Memorandum Opinion.....	20
Minute Order Granting Motion for Relief from Judgment, Denying Motion for Security of Costs and Attorneys Fees.....	19
Motion for Relief from Judgment and to Reset for Trial	15
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	29, 36
Notice Setting Case for Trial, 11/25/46.....	7
Notice Setting Case for Trial, 12/ 3/46:.....	8
Order Exhibits Be Not Printed.....	190
Order Extending Time to Docket.....	40
Plaintiff's Designation of Contents of Record on Appeal.....	38

INDEX	PAGE
Reporter's Transcript	42
Motion to Set Trial Date.....	42
Motion for Relief from Judgment	44
Witness, Defendants':	
Bianchi, Achille	
—direct	106
—cross	116
Witnesses, Plaintiff's:	
Barili, Arthur E.	
—direct	51, 68, 103
—cross	71, 104
—redirect	78
—recross	80
Bianchi, Achille	
—direct	92
—cross	97
—redirect	98
Cortopasse, Carlo	
—direct	88
—cross	91
Gierth, Herbert	
—direct	66
Statement of Points Relied Upon.....	32
Statement of Points.....	36
Statement of Points on Which Appellant Barili Intends to Rely on Appeal and Designation of Additional Parts of Record for Printing..	191
Statement of Points on Which Appellants In- tend to Rely on Appeal and Designation of Parts of Record for Printing.....	188

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Attorneys for Defendants and Appellees.

In the United States District Court, Northern
District of California, Southern Division

Civil Action No. 26534-H

ARTHUR E. H. BARILI,

Plaintiff,

vs.

ACHILLE BIANCHI, MARLO PACKING COR-
PORATION, a corporation, SUPERBA
PACKING CO., LTD., a corporation, and
PETE MEDA, d/b/a MEDA BROS.,
Defendants.

COMPLAINT FOR INFRINGEMENT OF
LETTERS PATENT No. 1,844,142

To the Honorable, the Judges of the United States
District Court for the Northern District of
California, Southern Division

Plaintiff for his complaint alleges as follows:

I.

Plaintiff, Arthur E. H. Barili, is a citizen of the
United States and a resident of Los Angeles, in the
County of Los Angeles and State of California.

II.

Defendant, Achille Bianchi, is a resident of the
City and County of San Francisco, State of Califor-
nia, in the Northern District of California, Southern
Division.

III.

Defendant, Marlo Packing Corporation, is a corporation, [1*] duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business located in the City and County of San Francisco, State of California, in the Northern District of California, Southern Division.

IV.

Defendant, Superba Packing Co., Ltd., is a corporation, duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business located in the City and County of San Francisco, State of California, in the Northern District of California, Southern Division.

V.

Defendant, Pete Meda, doing business as Meda Bros., is a resident of the City of Sacramento, County of Sacramento, and State of California, in the Northern District of California, Northern Division.

VI.

The jurisdiction of the Court is grounded upon the patent laws of the United States, and particularly upon Section 24 of the Judicial Code, (U. S. C., Title 28, Sec. 41), Paragraph Seventh, and R. S. Sec. 4921, (U. S. C., Title 35, Sec. 70).

* Page numbering appearing at foot of page of original certified Transcript of Record.

VII.

On February 9, 1932, United States Letter Patent No. 1,844,142, were duly and legally issued to plaintiff for an invention in a Stuffed Pastry Machine, and since that date plaintiff has been and still is the owner of those Letters Patent.

VIII.

Defendants have for a long time past been and still are jointly and severally infringing those Letters Patent by making, selling and using stuffed pastry machines embodying said patented invention, and will continue to do so unless enjoined by this Court. [2]

IX.

Plaintiff has placed the required statutory notice on all stuffed pastry machines manufactured and sold by him under said Letters Patent, and has given written notice to defendants of their said infringement.

Wherefore, plaintiff demands a preliminary and a final injunction against further infringement by defendants, and each of them, and those controlled by defendants, and each of them, an accounting for profits and damages, and order for delivery of infringing machines to U. S. Marshal and for destruction of said machines, and an assessment of costs against defendants.

ARTHUR E. H. BARILI,

By /s/ ALAN FRANKLIN,

Attorney for Plaintiff.

[Endorsed]: Filed Oct. 19, 1946. [3]

[Title of District Court and Cause.]

ANSWER

Come now the defendants Achille Bianchi and Marlo Packing Corporation, answering the complaint allege as follows:

1. These defendants do not deny the allegations of Paragraphs I, IV and V of the complaint, and admit the allegations of Paragraphs II and III.

2. These defendants do not deny that letters patent of the United States No. 1,844,142 were issued to plaintiff as set forth in Paragraph VII of the complaint, but they are not informed as to the alleged ownership by plaintiff of the said patent and therefore leave it to plaintiff to make such proof as he considers advisable.

5. These defendants deny the allegations of Paragraph VIII of the complaint. [4]

4. These defendants deny the allegations of Paragraph IX of the complaint.

Special and Affirmative Defenses

5. The said Letters Patent No. 1,844,142 are invalid for want of invention.

6. The said Letters Patent are invalid for the reason that all of the claims thereof include mere aggregations of old elements.

7. Further answering, these defendants aver that the said alleged invention purporting to be em-

braced in the said patent in suit was known and used by others in this country prior to the date of the supposed invention by plaintiff.

8. On information and belief these defendants allege that right of action set forth in the complaint against these defendants or either of them did not accrue within six years before the commencement of this action.

9. Further answering these defendants aver that plaintiff was not the original, true and sole inventor or discoverer of the alleged improvements or invention purporting to be covered by the patent in suit, or any material or substantial part or parts thereof, but said inventions and all material and substantial parts thereof had been disclosed to the public by others, invented by others, or patented by others than the said plaintiff prior to the dates of the alleged inventions thereof by the plaintiff, and for more than two years prior to February 9, 1932, as appearing in divers prior letters patent of the United States and foreign countries, as follows to-wit:

Holmes	518,454	April 17, 1894
Baier	769,932	September 13, 1904
Stenzy	775,152	November 15, 1904
Evans	1,094,320	April 21, 1914
Whitton	1,115,758	November 3, 1914
Frahm	1,487,226	March 18, 1924
British to Burns.....	181,567	June 22, 1922

Wherefore, these defendants pray that the Letters Patent in suit be held invalid, or in the alternative,

not infringed; that the complaint be dismissed; that defendants be awarded their costs herein incurred; and for such other relief as may appear to the court to be just.

/s/ J. E. TRABUCCO,

Attorney for Defendants,

Achille Bianchi and Marlo

Packing Corporation.

[Endorsed]: Filed Nov. 22, 1946. [6]

[Title of District Court and Cause.]

NOTICE

To Robert A. Zarick, Esq., 413 Capital National Bank Bldg., Sacramento, California; Messrs. Naylor and Lassagne, 2607 Russ Building, San Francisco 4, California; J. E. Trabucco, Esq., 550 Russ Building, San Francisco 4, California:

You Are Hereby Notified that on December 2, 1946, the above entitled case will appear on the Law and Motion calendar of Judge George B. Harris to be set for trial.

C. W. CALBREATH, *jes*,

Clerk, U. S. District Court.

San Francisco, California, November 25, 1946.

[Title of District Court and Cause.]

NOTICE

To Robert A. Zarick, Esq., 413 Capital National Bank Building, Sacramento, California; Messrs Naylor and Lassagne, Russ Building, San Francisco 4, California; J. E. Trabucco, Esq., 550 Russ Building, San Francisco 4, California:

You Are Hereby Notified that on December 2, 1946, Judge George B. Harris ordered that the trial in the above entitled case be set for February 6, 1947.

C. W. CALBREATH,
Clerk, U. S. District Court.

San Francisco, California, December 3, 1946.

[Title of District Court and Cause.]

INTERROGATORIES OF DEFENDANTS
ACHILLE BLANCHI AND MARLO PACK-
ING CORPORATION, AND ANSWERS
THERE TO

Now comes the defendants Achille Bianchi and Marlo Packing Corporation, and under the provisions of Rule 33 of the Rules of Civil Procedure, propound the following interrogatories to plaintiff, to be answered by him under oath:

Interrogatory No. 1. State when plaintiff first

learned of the alleged infringement by defendant Achille Bianchi of the patent in suit.

Answer to Interrogatory No. 1. Approximately some time during the month of July, 1946.

Interrogatory No. 2. State when plaintiff first learned of the alleged infringement by defendant Marlo Packing Corporation of the patent in suit.

Answer to Interrogatory No. 2. About July 15, 1946.

Interrogatory No. 3. State how and when written notice was first given to defendant Achille Bianchi of his alleged infringement of the patent in suit; and if such written notice was actually given, attach a copy thereof to your answers to these interrogatories.

Answers to Interrogatory No. 3. It is believed that a letter was written to defendant Achille Bianchi, on August 7, 1946, notifying him of his infringement of the patent in suit, but a copy of said letter has not at this time been found in the files of my attorney. The complaint in this suit, filed on October 19, 1946, and served on defendants, is written notice to said defendant Bianchi, of his infringement of the patent in suit.

Interrogatory No. 4. State how and when written notice was first given to defendant Marlo Packing Corporation of its alleged infringement of the patent in suit; and if such written notice was actually given, attach a copy thereof to your answer to these interrogatories. [9]

Answer to Interrogatory No. 4. A letter was written by my attorney, on August 7, 1946, to the defendant, Marlo Packing Corporation, as follows:

August 7, 1946.

“Marlo Packing Co.,
35 Williams Avenue,
San Francisco, California

Gentlemen:

I hereby notify you that the Stuffed Pastry Machine built by one, Bianchi, of San Francisco, and used by your company is an infringement of the patent issued to my client, Arthur E. H. Barili, February 9, 1932, No. 1,844,142.

Unless a satisfactory settlement is made for such infringement I am instructed to bring suit against your company for damages and an injunction.

Yours Very Truly,

ALAN FRANKLIN.”

Interrogatory No. 5. State which of the several claims of the patent in suit plaintiff will rely upon and urge that each defendant, Achille Bianchi and Marlo Packing Corporation, has infringed.

Answer to Interrogatory No. 5. Possibly Claim 1, and Claims 2, 3, 4, and 5.

Interrogatory No. 6. Precisely what does plaintiff assert or claim is new and patentable in each of the claims of the patent in suit charged to be infringed?

Answer to Interrogatory No. 6. The combinations of elements recited in the claims charged to be infringed.

Interrogatory No. 7. Precisely where, in the alleged infringing devices of Achille Bianchi and Marlo Packing Corporation is there found the features set forth as new and patentable in response to Paragraph 6 hereof, and in that connection plaintiff will:—

(a) Point out by reference characters applied to drawings, photographs or other suitable illustrations of each of these defendant's alleged infringing device or devices the elements of each of the claims of the patent in suit alleged to be infringed.

(b) Point out by reference characters applied to drawings, photographs or other suitable illustrations of each of these defendant's [10] alleged infringing device or devices the features set forth as new and patentable in response to paragraph 6 hereof.

Answer to Interrogatory No. 7. (a): Claim 1. On the attached print 11 and 12 are the intergeared rollers. Rollers designated 5 and 6, and 7 and 8, tables 3 and 4, chain 39 extending over sprockets 39^a and 39^b and chain 44 extending over sprockets 44^a and 44^b are the means for forming and feeding the sheets of flour paste to rollers 11 and 12. The open-bottom straight-sided hopper for guiding stuffing to the paste sheets on the rollers 11 and 12 is indicated 20; bottom edges 20' of said hopper shaped to conform to contour of rollers 11 and 12. Means on the rollers for cutting the stuffed paste sheets into squares are the annular cutters 13 and

14 and the axial cutters 15 and 16. Rollers 11 and 12 are provided with deep square molds 11^a and 11^b, and 12^a and 12^b, into which the stuffed paste is free to enter, and said rollers have broad peripheral margins 11^c and 12^c between the molds and cutting means 13, 14, 15 and 16, between which margins the paste sheets become firmly pressed together and the stuffing expelled from said marginal portions.

Claim 3, Corresponding elements of this claim are the same as those designated above in Claim 2. In this claim 3 is also specified weight insertable loosely in the hopper 20 for pressing the stuffing against the paste sheets. In the Bianchi and Marlo machines a heavy wooden bar about 2" x 4" was used in the hopper for pressing the stuffing down against the paste sheets.

Claim 4. Corresponding elements of this claim are the same as those above designated in Claim 2. In addition this claim 4 specifies a detachable open bottom hopper for guiding stuffing to the paste sheets on the rollers. In the Bianchi and Marlo machines the hopper 20 is detachably mounted on angle bars 7', threaded vertical stud rods 76 and nuts 77 on said rods supporting said angle bars.

Claim 5. Corresponding elements of this claim are the same as [11] those above designated in Claim 2. The means for adjusting the hopper 20 vertically to accommodate paste sheets of various thickness are the angle bars 75, threaded vertical stud rods 76 and nuts 77 on said rods supporting said angle bars.

(b) The features are the same as the elements pointed out above in (a).

Interrogatory No. 8. Specify how, when and in what manner defendants Achille Bianchi and Marlo Packing Corporation have jointly infringed the patent in suit.

Answer to Interrogatory No. 8. Defendant, Achille Bianchi, built a stuffed pastry machine, which infringes the patent in suit, and sold said machine to defendant, Marlo Packing Corporation, which defendant used said machine for making ravioli. Said machine, according to information which I obtained from the latter defendant, was later sent back to the defendant, Achille Bianchi, for repairs which were made by said defendant, Bianchi.

Interrogatory No. 9. Has plaintiff received compensation from others for the use of any ravioli machine made by defendant Achille Bianchi?

Answer to Interrogatory No. 9. (No answer.)

Interrogatory No. 10. If your answer to interrogatory 9 is in the affirmative, state from whom such compensation was received, the amount of such compensation, and the date when the compensation was received.

Answer to Interrogatory No. 10. (No answer.)

[Endorsed]: Filed Jan. 2, 1947. [12]

In the United States District Court for the
Northern District of California, Southern
Division

Civil Action No. 26534-H

ARTHUR E. H. BARILI,

Plaintiff,

vs.

ACHILLE BIANCHI, MARLO PACKING COR-
PORATION, a corporation, SUPERBA
PACKING CO., LTD., a corporation, and
PETE MEDA, doing business as Meda Bros.,
Defendants.

FINAL DECREE

This cause came on to be heard, evidence was submitted on behalf of defendants and the cause was argued by counsel for defendants, and thereupon, upon consideration thereof, the Court having made and entered its Findings of Fact and Conclusions of Law herein, in accordance therewith,

It Is Hereby Ordered, Adjudged and Decreed as follows, viz:

1. That none of the patent claims of the patent in suit has been infringed by defendants, or either of them.
2. That the bill of complaint herein be, and the same is, hereby dismissed.
3. That plaintiff pay the defendants Achille Bianchi and Marlo Packing Corporation the

sum of Five Hundred Dollars [13] (\$500.00)
for Court costs and counsel fees.

Dated this 7th day of February, 1947.

GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed Feb. 7, 1947. [14]

[Title of District Court and Cause.]

MOTION FOR RELIEF FROM JUDGMENT
AND TO RESET FOR TRIAL

Plaintiff moves the Court to vacate the Order for Judgment, dated February 6, 1947, and the Decree, entered herein on February 7, 1947, on the ground that the decree was entered and judgment was taken against plaintiff through mistake, inadvertence and surprise as more fully appears from the affidavit of W. Bruce Beckley, attached hereto.

Plaintiff further moves the court for an order resetting the cause for trial.

ALAN FRANKLIN,
BOYKEN, MOHLER &
BECKLEY,
W. BRUCE BECKLEY,
Attorneys for Plaintiff.

Dated February 13, 1947. [15]

[Title of District Court and Cause.]

AFFIDAVIT

State of California,
City and County of San Francisco—ss.

W. Bruce Beckley, being duly sworn, deposes and says that Alan Franklin, Esq., is attorney of record for plaintiff in the action *Barili v. Bianchi et al.*, pending herein; that on two occasions, at the request of Mr. Franklin, he argued preliminary motions on behalf of plaintiff; that the action was set for trial at some time unknown to affiant; that affiant is informed by telephone by Mr. Franklin and believes that Mr. Franklin received no notice that the cause was to be set for trial or that it had been set for trial as provided in Rule 7 of this court, and that he had no other notice of the date set for trial; that affiant is informed by the clerk of this court and believes that no such notice was sent to Mr. Franklin, that on February 5, 1947, the Clerk called affiant's office asking if the action was ready for trial but that both affiant and Mr. A. W. Boyken were out of San Francisco at that time and remained out of the city until the following week; that no other person in affiant's office had any knowledge of the case; that affiant has discussed the matter with Mr. Franklin by telephone and that Mr. Franklin stated that he is preparing an affidavit setting forth the above facts. [16]

W. BRUCE BECKLEY.

Subscribed and sworn to before me this 13th day of February, 1947.

[Seal]

[Signature illegible]

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires March 4, 1950.

[Endorsed]: Filed Feb. 13, 1947. [17]

[Title of District Court and Cause.]

AFFIDAVIT

State of California,
County of Los Angeles—ss.

Alan Franklin, being first duly sworn, deposes
and says:

I am the attorney for the plaintiff, Arthur E. H. Barili, in the above-entitled action. I am informed that, on February 6, 1947, said action was tried on its merits by the above-entitled Court, without the presence of counsel for the plaintiff therein, and that a final decree was entered in said action against the plaintiff on February 7, 1947. I understood that Rule 7 of the Rules of Practice of said Court required that all civil cases be placed on a Preliminary Calendar thirty-five days after filing the same and that counsel for all parties should be notified for the purpose of discussing matters relative to settlement of pleading, etc., and that all cases should remain on said calendar until set for trial. I have not received such a notice, or any notice whatever that the above-entitled case was to be set for trial, nor have I received any notice or been advised that

said case had been so set. I knew nothing about the setting and trial of said case until February 8, 1947, when I received a notice, dated February 7, 1947, from the Clerk of said Court, that said Court had ordered that judgment be entered for the defendants in said case and that plaintiff be required to make partial payment of \$500.00 on account of costs to be allowed the defendants. I have been informed for the first time, upon reading the Findings of Fact and Conclusions of Law in said case, filed by the attorney for Achille Bianchi and Marlo Packing Corporation, a corporation, defendants in said case, that said action had been dismissed as to the [18] defendant Pete Meda in said action. The said trial, decree and dismissal in said action were certainly a great surprise to me.

/s/ ALAN FRANKLIN.

Subscribed and sworn to before me this 13th day of February, 1946.

[Seal] GEORGE MULLIS,
Notary Public in and for the County of Los Angeles,
State of California.

My commission expires March 22, 1947.

[Endorsed]: Filed Feb. 18, 1947. [19]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 10th day of March, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable George B. Harris,
District Judge.

[Title of Cause.]

ORDER GRANTING MOTION FOR RELIEF
FROM JUDGMENT, ORDER DENYING
MOTION FOR SECURITY OF COSTS,
ETC.

This case came on regularly this day for hearing of motion for relief from judgment, motion to reset for trial, and motion for security of costs and attorney fees. After hearing Mr. Franklin and Mr. Beckley, for plaintiff, and Mr. Trubucco, for defendant, it is Ordered that the motion for relief from judgment be granted, and that the motion for security of costs, etc., be denied. Further Ordered that trial be set for March 11, 1947 (Count). [20]

In the District Court of the United States for
the Northern District of California, Southern
Division

No. 26534-H

ARTHUR E. H. BARILI,

Plaintiff,

vs.

ACHILLE BIANCHI, and MARLO PACKING
CORPORATION, a corporation,

Defendants.

MEMORANDUM OPINION

Plaintiff, inventor of a ravioli machine, sues the defendants for infringement of his patent, No. 1,844,142, granted on February 9, 1932. Plaintiff initially contended that several claims were violated by defendant Bianchi in the construction of the machine used in the production of ravioli by defendant, Marlo Packing Corporation.

As early as 1927, plaintiff applied to the patent office for the issuance of the patent on his automatic ravioli making machine. During the course of five years, the [21] patent office examined plaintiff's claims in the light of the prior art. Particular attention was paid to a confection molding machine devised by one Holmes. In view of the Holmes invention and other machines developed, plaintiff's early claims were rejected. Not until plaintiff had narrowed his description to a point where it clearly set forth machinery that was novel in the manu-

facturing process did the patent office finally give approval to his claims, which ultimately numbered five. Claim 4 was amended in accordance with language suggested by the patent office in order to accurately represent the device.

During the trial, plaintiff and defendants narrowed the issue to claim 4, which describes the mechanism for the compression of the ravioli after the two sheets of dough have acquired the stuffing from a hopper. By means of a pair of rollers, one of which contains a series of molds and a set of axial blade cutters extending between the molds, and the other containing annular blade cutters running opposite wide marginal surfaces between the molds, the ravioli are shaped, the borders are compressed and the edges are cut into the final ravioli shape.

Defendants' machine follows the description set forth in claim 4 of plaintiffs' patent with one exception, which is an equivalent of plaintiff's device, namely: Defendant has transposed the annular blade cutters from the roller which contains the molds to the opposite roller which thus contains both annular and axial blades. [22]

Such transposition does not change the mechanical function, or operation of the machine, and is not the basis for a valid distinction between defendants' ravioli machine and that described in claim 4 (Walker on Patents, Deller's Ed. Vol. 3, Sec. 463, pp. 1699-1670).

Defendant places emphasis on the fact that the word "contact" is used by plaintiff in a descrip-

tion of his machine to indicate the method under which the rollers operate, and asserts that the word contact means "touch." Defendants' machine does not have such actual meeting of the parts on the opposite and revolving rollers. Rather, the dough itself touches when it is compressed and cut at the edges. The same operation occurs in plaintiff's machine as shown by the patent diagram.

Despite defendants' contention that the word contact means "touch," the Court is not persuaded to accept such a definition, nor to find a distinction in the two machines based on a refined dictionary definition which has no place in the terminology of scientific text books. In *Stuart Oxygen Company, Ltd., a corporation, vs. William Josephian, No. 11,445*, decided June 18, 1947, 9th Cir., the court in disposing of a similar contention based upon a refinement of definition said in speaking of the device in question: "The units are substantially identical in construction and perform their function in substantially the same way."

In the case at bar, as plaintiff has demonstrated, the word contact has sufficient flexibility to describe the specific operation in dispute of both the plaintiff's and defendants' machines. It is not a limiting factor on plaintiff's invention; rather it is an artificial distinction between the two ravioli machines.

The court has considered the evidence with respect to the several devices relied upon as anticipating plaintiff's machine. In the essentials the devices are dissimilar from that described in claim 4 which the court has found valid.

The evidence is clear and convincing that the so-called Bianchi machine, used by defendant Marlo Packing Corporation, violates said claim; accordingly the defendants are enjoined from further infringing plaintiff's patent.

With respect to damages: Plaintiff has failed to produce evidence of any alleged damage. The court in the light of the instant record is not prepared to allow damages or loss of profit. (*Garretson v. Clark*, 111 U. S. 120.)

Findings of fact and conclusions of law may be prepared and decree entered in accordance with the foregoing.

GEORGE B. HARRIS,
United States District Judge.

Dated July 9, 1947.

[Endorsed]: Filed July 9, 1947. [24]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled action having been tried on its merits by the Court without a jury on March 11, 1947, after due consideration, the Court enters the following Findings of Fact and Conclusions of Law, pursuant to Rule 52(a) of the Federal Rules of

Civil Procedure and Rule 5(e) of Rules of Practice, District Court of the United States, Northern District of California:

Findings of Fact

1.

Plaintiff, Arthur E. H. Barili, is the inventor of the subject matter of United States Letters Patent No. 1,844,142 and claim 4 thereof, granted February 9, 1932, for a Stuffed Pastry Machine. [25]

Defendant, Achille Bianchi, has engaged, without authority, in the manufacture and sale of stuffed pastry machines embodying the invention covered by claim 4 of said Letters Patent No. 1,844,142, and particularly in the manufacture and sale of stuffed pastry machines of the type exemplified in Defendants' Exhibit B (photograph of Bianchi machine).

3.

Defendant, Marlo Packing Corporation, a corporation, has engaged, without authority, in the use of stuffed pastry machines embodying the invention covered by claim 4 of said Letters Patent No. 1,844,142, and particularly in the use of stuffed pastry machines of the type exemplified in Defendants' Exhibit B.

4.

Plaintiff produced no evidence of alleged damage at the time of trial of the case.

Conclusions of Law

1.

The Court has jurisdiction of the subject matter and the parties to this action.

2.

Plaintiff, Arthur E. H. Barili, is the owner of United States Letters Patent No. 1,844,142, granted February 9, 1932, to him for Stuffed Pastry Machine, the inventions disclosed therein, and all rights and privileges under said Letters Patent.

3.

United States Letters Patent No. 1,844,142, and particularly claim 4 thereof, is good and valid in law. [26]

4.

Defendant, Achille Bianchi, has infringed said Letters Patent No. 1,844,142, claim 4 thereof, by manufacturing and selling stuffed pastry machines embodying the invention covered by said Letters Patent, and particularly by manufacturing and selling stuffed pastry machines of the type exemplified in Defendants' Exhibit B, and thereby violated the rights of the plaintiff under said Letters Patent.

5.

Defendant, Marlo Packing Corporation, has infringed said Letters Patent No. 1,844,142, claim 4 thereof, by using stuffed pastry machines embodying the invention covered by said Letters Patent,

and particularly by using stuffed pastry machines of the type exemplified in Defendants' Exhibit B, and thereby violated the right of the plaintiff under said Letters Patent.

6.

No damages or loss of profit are allowed to plaintiff by reason of the infringement of said Letters Patent.

7.

Plaintiff is entitled to a final injunction against further infringement by defendants, Achille Bianchi and Marlo Packing Corporation, a corporation, and each of them, and those controlled by them, and each of them.

8.

Plaintiff is entitled to an assessment of costs against said defendants, Achille Bianchi and Marlo Packing Corporation, a corporation. [27]

GEORGE B. HARRIS,

United States District Judge.

Dated Aug. 1, 1947.

Receipt of a copy of the foregoing Findings of Fact and Conclusions of Law is acknowledged this 21st day of July, 1947.

J. E. TRABUCCO,

Attorney for Defendants.

[Endorsed]: Filed Aug. 1, 1947. [28]

In the United States District Court for the North-
ern District of California, Southern Division
Civil Action No. 26534-H

ARTHUR E. H. BARILI,

Plaintiff,

vs.

ACHILLE BIANCHI, et al.,

Defendants.

FINAL JUDGMENT

The above entitled action having come on to be heard before the Court for final hearing, upon the testimony of witnesses heard in open court, and Findings of Fact and Conclusions of Law having been filed, and the Court being fully advised in the premises, it is

Ordered, Adjudged and Decreed as follows:

1.

Plaintiff, Arthur E. H. Barili, is the owner of United States Letters Patent No. 1,844,142, granted February 9, 1932, to him for Stuffed Pastry Machine, the invention disclosed therein, and of all the rights and privileges under said Letters Patent.

2.

United States Letters Patent No. 1,844,142, and particularly claim 4 thereof, is good and valid in law.

3.

Defendant, Achille Bianchi, has infringed said Letters Patent No. 1,844,142, claim 4 thereof, by manufacturing and selling stuffed pastry machines embodying the invention covered by said Letters Patent, and particularly by manufacturing and selling stuffed pastry machines of the type exemplified in Defendants' Exhibit B, and thereby violated the rights of the plaintiff under said Letters Patent.

4.

Defendant, Marlo Packing Corporation, a corporation, has infringed said Letters Patent No. 1,844,142, claim 4 thereof, by using stuffed pastry machines embodying the invention covered by said Letters Patent, and particularly by using stuffed pastry machines of the type exemplified in Defendants' Exhibit B, and thereby violated the rights of the plaintiff under said Letters Patent.

5.

Plaintiff shall recover no damages or loss of profit from the defendants by reason of their infringement of said Letters Patent.

6.

A final injunction may issue forthwith against further infringement by defendants, Achille Bianchi and Marlo Packing Corporation, a corporation, and each of them and those controlled by them and each of them.

7.

Plaintiff may recover his costs of this suit in the amount of \$57.67.

Dated: Aug. 1, 1947.

GEORGE B. HARRIS,
United States District Judge.

Approved as to form as provided in Rule 5 (d):

J. E. TRABUCCO.

Attorney for Defendants.

Receipt of a copy of the foregoing Final Judgment is acknowledged this 21st day of July, 1947.

J. E. TRABUCCO,

[Endorsed]: Filed and entered August 1, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Achille Bianchi and Marlo Packing Corporation, defendants in the above entitled case, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered in this case by the Honorable George B. Harris on August 1, 1947, holding the patent in suit valid and infringed and from portions of the decision of Said Judge adverse to defendants and from the Findings of Fact, Conclusions of Law, and rulings which were adverse to defendants.

/s/ J. E. TRABUCCO,

Attorney for Defendants.

[Endorsed]: Filed Aug. 18, 1947. [32]

[Title of District Court and Cause.]

COST BOND ON APPEAL

The Fidelity and Casualty Company of New York
No. 1941179

Whereas, Achille Bianchi and Marlo Packing Corporation, defendants herein, have prosecuted or are about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment nad decree rendered in the above entitled cause on the first day of August, 1947 by the District Court of the United States for the Northern District of California, Southern Division.

Now, therefore, in consideration of the premises, the undersigned, The Fidelity and Casualty Company of New York, a corporation duly organized and existing under the laws of the State of New York and duly organized and licensed by the laws of the State of California to do a general surety business in the State of California, does hereby undertake and promise on the part of Achille Bianchi and Marlo Packing Corporation, appellants, that they will prosecute their appeal to effect and answer all costs if they fail to make good their appeal, not exceeding the sum of Two Hundred Fifty and no/100ths (\$250.00) Dollars to which amount said The Fidelity and Casualty Company of New York, acknowledges itself justly bound.

And, further, it is expressly understood and agreed that in case of a breach of any condition of the above obligation, the Court in the above entitled

matter may, upon notice to the Fidelity and Casualty Company of New York, of not less than ten (10) days, proceed summarily in the action or suit in which the same was given to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefore against it and award execution therefore.

Signed, sealed and dated this seventh day of August, 1947.

[Seal]

THE FIDELITY AND
CASUALTY COMPANY
OF NEW YORK,

By /s/ CARROLL R. YOUNG,
Attorney.

State of California,
City and County of San Francisco—ss.

On this 7th day of August in the year One Thousand Nine Hundred and Forty-seven, before me, Walter E. McGuire, a Notary Public in and for the said City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared Carroll R. Young, known to me to be the Attorney of The Fidelity and Casualty Company of New York, the Corporation that executed the within instrument, and known to me to be the person who executed the said instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in the County of San Francisco, the day and year in this certificate first above written.

[Seal] WALTER E. McGUIRE,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Jan. 3, 1951.

[Endorsed]: Filed August 18, 1947. [33]

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED UPON

Now come the defendants, Achille Bianchi and Marlo Packing Corporation, by their attorney, and having filed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Final Judgment heretofore entered in the above entitled case by the District Court on or about August 1, 1947, finding in favor of plaintiff, and state that upon their appeal they will rely upon the following points:

1. That the Court erred in holding claim 4 of Letters Patent No. 1,844,142 is good and valid in law. (Conclusions of Law No. 3.)

2. That the Court erred in not granting a decree holding claim 4 of said patent invalid and void.

3. That the Court erred in holding defendants infringed claim 4 of said patent. (Conclusions of Law Nos. 4 and 5.)

4. That the Court erred in not holding that claim 4 of said patent was anticipated by the prior art.

5. That the Court erred in not holding said claim 4 to be invalid because of its failure to set forth the structure shown and described in the patent drawings and specification.

6. That the Court erred in not holding the patent in suit is a secondary or improvement patent and therefore susceptible of but a narrow construction.

7. That the Court erred in not holding that said claim 4 is susceptible of but a narrow construction in view of the file wrapper limitations.

8. That the Court erred in not dismissing the complaint.

9. That the Court erred in awarding costs of suit to plaintiff.

10. That the Court erred in granting plaintiff an injunction against defendants as prayed in the complaint.

ACHILLE BIANCHI and
MARLO PACKING
CORPORATION,

By /s/ J. E. TRABUCCO,
Their Attorney.

[Endorsed]: Filed Aug. 19, 1947. [35]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

To the Clerk of the United States District Court for the Southern Division in the Northern District of California:

You are hereby requested to certify as the combined record on appeal in the above entitled case in the United States Circuit Court of Appeals for the Ninth Circuit for use in the the appeal, the following material:

1. The complaint.

2. Answer of defendants Achille Bianchi and Marlo Packing Corporation.

3. Interrogatories of defendants Achille Bianchi and Marlo Packing Corporation.

4. Answers to interrogatories.

5. Memorandum Opinion of Judge George B. Harris dated July 9, 1947.

6. Findings of fact and conclusions of law (August 1, 1947). [36]

7. Final judgment (August 1, 1947).

8. Defendants' exhibits:

A. Pamphlet illustrating pastry forming machine printed in Italy (Physical exhibit).

B. Photographs of Bianchi machine (Physical exhibit).

C. Certified copy of the file wrapper and contents of Barili Patent No. 1,844,142 (Physical exhibit).

D. Printed copy of Holmes Patent No. 518,454.

E. Printed copy of Evans Patent No. 1,094,320.

F. Printed copy of Oleri Patent No. 1,479,925.

G. Printed copy of Tommasini Patent No. 1,236,998.

9. Plaintiff's exhibits:

Printed copy of Barili Patent No. 1,844,142.

(The exhibits above designated as physical exhibits are not to be bound with the record but are to be transmitted as physical exhibits)

10. Transcript of the evidence and proceedings before Judge George B. Harris on March 11, 1947, omitting from page 2 lines 3 to 25 inclusive; omit-

ting from page 3, lines 1 to 9 inclusive, and also omitting from page 3, lines 16 to 25 inclusive; omitting entire page 4; omitting from page 7, lines 4 to 25 inclusive; omitting pages 8 to 25 inclusive; omitting from page 26, lines 1 to 4 inclusive; omitting from page 27, lines 2 to 25 inclusive; omitting pages 28 and 29; omitting from page 30, lines 1 and 2; omitting from page 34, lines 18 to 25 inclusive; omitting page 35; omitting from page 36, lines 2 to 8 inclusive and lines 13 to 17 inclusive; omitting from page 37, lines 1 to 6 inclusive; omitting pages 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48; omitting from page 49, lines 1 to 12 inclusive; omitting from page 52, lines 11 to 25 inclusive; omitting page 53; omitting from page 54, lines 1 to 23 inclusive; omitting from page 57, lines 18 to 25 inclusive; omitting pages 58, 59, 60, 61 and 62; omitting from [37] page 63, lines 1 to 10 inclusive; omitting from page 79, lines 10 to 25 inclusive; and omitting pages 80 to 117 inclusive.

11. Notice of appeal.
12. Statement of Points relied upon.
13. Cost Bond on Appeal.
14. This Designation of Contents of Record on Appeal.
15. Clerk's certificate.

/s/ J. E. TRABUCCO,
Attorney for Defendants.

[Endorsed]: Filed Aug. 19, 1947. [38]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Arthur E. H. Barili, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on or about August 1, 1947, for failure of said judgment to order an accounting of damages by defendants to plaintiff and for failure to award a reasonable attorney's fee to the plaintiff herein.

/s/ ALAN FRANKLIN,
Attorney for Appellant,
Arthur E. H. Barili.

[Endorsed]: Filed Aug. 29, 1947. [39]

[Title of District Court and Cause.]

STATEMENT OF POINTS

Plaintiff, Arthur E. H. Barili, now files the following Statement of Points asserted as errors and intended to be urged in the prosecution of his appeal from the Final Judgment entered herein on or about August 1, 1947, and asserts that the trial court erred in each of the following respects:

1. In ordering the case to trial the day after setting aside a former judgment in favor of the defendants rendered on a former trial, of which plaintiff received no notice from the Clerk of Court, and

thereby depriving plaintiff of sufficient time to secure evidence of his damages sustained by plaintiff, by reason of the defendants' infringement of the plaintiff's patent in suit.

2. In not ordering an accounting of damages by the defendants to the plaintiff for defendants' infringement of the [40] plaintiff's patent in suit.

3. In not awarding the plaintiff a reasonable attorney's fee in accordance with the Act of August 1, 1946, Public Law No. 587, 79th Congress, Sec. 4921, R. S. (U.S.C., title 35, sec. 70), in view of the defendants' wilful infringement of the plaintiff's patent.

Wherefore, the plaintiff prays that the Final Judgment entered herein, on or about August 1, 1947, by the District Court, be modified, by ordering an accounting of damages by the defendants to the plaintiff for infringement of the plaintiff's patent, and by awarding a reasonable attorney's fee to the plaintiff.

/s/ ALAN FRANKLIN,
Attorney for Plaintiff.

Receipt of a copy of the within Statement of Points is acknowledged this 28th day of August, 1947.

/s/ J. E. TRABUCCO,
Attorney for Defendants.

[Endorsed]: Filed Aug. 29, 1947. [41]

[Title of District Court and Cause.]

PLAINTIFF'S DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

To the Clerk of the District Court of the United
States for the Northern District of California,
Southern Division:

Please include in the transcript of the record in
this cause, to be filed in the office of the Clerk of the
United States Circuit Court of Appeals for the
Ninth Circuit pursuant to the appeal to said Court,
the following:

1. Reporter's Transcript of the evidence at the
trial of the case on March 11, 1947, page 2, lines 3 to
17 inclusive; page 3, lines 16 to 25, inclusive; page 4;
page 7, lines 4 to 7 inclusive; page 8, lines 21 to 25
inclusive; page 9, lines 1 to 3 inclusive; page 10,
lines 8 to 12 inclusive; page 11, lines 14 to 19 inclu-
sive, line 24, only the word "1." and line 25; page
12, lines 1 to 14, inclusive, and lines 24 and 25; page
13, lines 1 to 11, inclusive, and lines 15 to 25 inclu-
sive; page 14; [42] pages 15 to 19 inclusive; page 20,
lines 1 to 13 inclusive; pages 21 to 25 inclusive; page
26, lines 1 to 4 inclusive; page 27, lines 2 to 25 inclu-
sive; pages 28 and 29; page 30, lines 1 and 2; page
34, lines 18 to 25 inclusive; page 35; page 36, lines
2 to 8 inclusive; pages 39, 40, 41, 42, 43, 44, 45, 46,
47 and 48; page 49, lines 1 to 9 inclusive; page 52,
lines 11 to 25 inclusive; page 53; page 54, 1 to 13
inclusive; page 57, lines 18 to 25 inclusive; pages 58
and 59; page 60, lines 1 to 15; page 61, lines 1 to 12

inclusive, and lines 19 to 25 inclusive; page 62; page 63, line 4.

2. Notice to set for trial, dated November 25, 1946.

3. Reporter's Transcript of argument on setting for trial, dated December 2, 1947, pages 1 and 2 (including line showing appearing counsel).

4. Notice setting case for trial, dated December 3, 1946.

5. Final Decree, dated February 7, 1947.

6. Motion for Relief From Judgment and to Reset for Trial dated February 13, 1947.

7. Affidavits of W. Bruce Beckley and Alan Franklin, dated February 13, 1947 supporting said motion.

8. Reporter's Transcript of argument on Motion for Relief from Judgment and to Reset for Trial, dated March 10, 1947, pages 1 to 6, inclusive (including lines showing appearing counsel).

9. Minute Order entered March 10, 1947.

10. Plaintiff's Exhibit 3, For Identification, (Circular issued by Riviera Packing Company).

11. Plaintiff's Notice of Appeal.

12. Plaintiff's Statement of Points.

13. This Designation of Contents of Record on Appeal.

Dated: September 8, 1947.

/s/ ALAN FRANKLIN,
BOYKEN, MOHLER &
BECKLEY,

/s/ W. BRUCE BECKLEY,
Attorneys for Plaintiff.

Receipt of a copy of the above acknowledged this 8th day of September, 1947.

/s/ J. E. TRABUCCO,
Attorney for Defendant.

[Endorsed]: Filed Sept. 8, 1947. [44]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby ordered that the appellants herein may have to and including November 6, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: September 26, 1947.

GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed Sept. 26, 1947.

District Court of the United States,
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 45 pages, numbered from 1 to 45, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Arthur E. H. Barili, plaintiff vs. Achille Bianchi, Marlo Packing Corporation, a corporation, defendants, No. 26534 H, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$10.00 and that the said amount has been paid to me by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 22d day of October, A. D. 1947.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ M. E. VAN BUREN,
Deputy Clerk.

In the Southern Division of the United States District Court for the Northern District of California

Before: Hon. George B. Harris,
Judge.

Civil Action No. 26534-H

ARTHUR E. H. BARILI,

Plaintiff

vs.

ACHILLE BIANCHI, MARLO PACKING CORPORATION, a corporation, SUPERBA PACKING CO., LTD., a corporation, and PETE MEDA, doing business as MEDA BROS.,

Defendants.

MOTION TO SET TRIAL DATE

December 2, 1946

Counsel Appearing:

For Defendant Superba Packing Co.: James Naylor, Esq.

The Clerk: Barili versus Bianchi, to be set for trial.

Mr. Naylor: If the Court please, I represent one of the several defendants, namely, Superba Packing Company, and Mr. Eugene Trabucco represents the defendants Marlo Packing Company and Bianchi. I have been asked by Mr. Bianchi to speak for him

this morning as to a trial date, and speaking for those three defendants, any date in January or thereafter, to suit the court's convenience, will be satisfactory.

The Court: What is the nature of this cause?

Mr. Naylor: It is a patent case.

The Court: How many other defendants are there other than the three you speak of?

Mr. Naylor: There is one other defendant.

The Court: Resident or non-resident?

Mr. Naylor: Non-resident: Meda Packing Company.

The Court: Who appears for that packing company?

Mr. Naylor: I think Robert A. Zarick of Sacramento. I am not familiar with the gentleman at all. I do not know whether he has even filed a pleading yet.

The Court: Have you a date in January?

The Clerk: January is fairly crowded.

The Court: February?

Mr. Naylor: I should think two days would be adequate for the case.

The Court: What is the underlying issue in the case?

Mr. Naylor: Patent infringement.

The Court: What is the nature of the patent?

Mr. Naylor: A ravioli-making machine. It is not a very complicated structure and it should not take long to present to the court.

The Clerk: February 6?

The Court: February 6. So ordered.

[Title of District Court and Cause.]

MOTION FOR RELIEF FROM JUDGMENT

March 10, 1947

Counsel Appearing:

For Plaintiff: Alan Franklin, Esq., W. Bruce Beckley, Esq.

For Defendants: J. E. Trabucco, Esq.

The Clerk: Barili vs. Bianchi.

Mr. Franklin: Your Honor, this is a motion for relief from a judgment that was rendered against the plaintiff without notice to the plaintiff. I have presented an affidavit that I had never received any notice that the case had been set for trial. Mr. Beckley has an affidavit showing that the clerk admitted that he did not send out the notice. So the plaintiff has not had his day in court. To render a judgment against a party without knowing anything about it, without notice, is not due process of law, and plaintiff's constitutional rights have been seriously violated. I do not accuse anyone of intentionally bringing this about. I think it was one of those things that slipped by without being noticed. So I think the judgment should be set aside. The judgment is irregular in another respect. It was taken as a default, and the Federal Rules do not provide for a default in a case like this. You only take a default on a claim for affirmative relief. The defendant filed no claim for affirmative relief in this case. There was no counterclaim filed. So the judgment is irregular, anyway.

I think in view of the facts of the case the judgment should be vacated and set aside, and a new trial granted. I have some authorities here that Mr. Beckley just gave me. One is *Jerkins vs. Single*, 165 Cal. 747, 748. Another one, *United States vs. Mutual Construction Corporation*, 3 Fed. Rules Decisions, 227, District Court of the Eastern District of Pennsylvania, January 11, 1943. Another case is *Huntington Cab Company vs. American Fidelity & Casualty Company*, 4 Fed. Rules Decisions, 496, District Court, Southern District of West Virginia, September 19, 1945. These are cases holding that the judgments should be set aside in view of the facts of the cases, which are very similar to this one.

Mr. Trabucco: If your Honor please, at this time I wish to state that we have no particular objection to the setting aside of this judgment, providing the plaintiff furnish a security bond insuring the defendants, in the event they are successful, their attorneys fees and costs. The defendants have been put to considerable trouble in this matter, and the negligence of the plaintiff has caused them several hundreds of dollars, and it seems no more than fair that a security bond should be deposited in favor of the defendants, jointly and severally, in the event of their success in the trial of the suit. Of course, the court has the discretion to require such a bond. The authorities are ample supporting this view. There is the case of *Clune vs. Sullivan*, 56 California.

The Court: Is that cited in your memorandum?

Mr. Trabucco: No, it is not, your Honor.

The Court: What is the citation?

Mr. Trabucco: *Clune vs. Sullivan*, 56 Cal. 249.

The Court: Counsel on the other side, as I recall the moving papers, take the position that in a case of this character, having in mind the very nature of the case, there is no provision made for security of costs, nor would it be proper for this court to grant such an application on your part.

Mr. Trabucco: It is common practice in this court to permit a non-resident plaintiff, or to require a non-resident plaintiff to supply a cost bond.

The Court: I glanced at the file very casually, and my recollection is that three or four cases were cited by the other side, is that correct?

Mr. Trabucco: Yes. I have cited several cases, your Honor. The plaintiff in this case is from Los Angeles. He is not in the jurisdiction of this particular court. His property is not in this jurisdiction, and it would be impossible legally to collect the judgment if we obtain one. So it is no more than fair, in view of the trouble the defendants have been put to, and the additional cost of this matter, that he furnish a bond securing the defendants and their attorneys fees and costs in the event they are successful.

The other part of this motion, your Honor, is the setting of the case for trial. We would like an early trial if possible.

The Court: Counsel, Mr. Trabucco, do you recall the day the matter was argued in connection with the taking of depositions?

Mr. Trabucco: Yes, your Honor.

The Court: Reference was then made between yourself and opposing counsel with respect to the date of trial.

Mr. Trabucco: Yes, your Honor.

The Court: The actual trial date was discussed in open court.

Mr. Trabucco: Yes.

The Court: And I distinctly recalled that the actual trial date was discussed. In the very nature of things, this court would not have gone to trial, but for that fact, which I definitely recalled. The circumstance that notice may not have been sent out is, of course, one that I am going to consider, but I recall when you came into court, Mr. Trabucco, on that occasion, and there was no opposition, that I then reminded you that opposing counsel did have actual information concerning the trial. The matter was discussed, not once, but two or three times, because both counsel were very eager that this court get out a decision on the question involved in the disposition, and I did so promptly. So when counsel, Mr. Franklin, speaks of due process and all these other fundamentals that courts necessarily have to consider, I am inclined to recall that circumstance, that we did discuss the trial date in court. Am I correct, sir?

Mr. Beckley: May I make a statement in respect to that, your Honor? I argued that motion at the time the trial date was set. Our office was handling this matter for Mr. Franklin, and we are not attorneys of record. As a consequence, when the trial date was discussed that morning, I at that time did

not have knowledge that Mr. Franklin was not aware that the trial date had been set.

The Court: I do not follow you. There is a negative in there.

Mr. Beckley: I do not know at the time the matter of the trial date came up that Mr. Franklin was not aware that a trial date had been set. As a consequence, since it came up as an incident in the course of our argument on the interrogatories, it did not occur to me that I was receiving information which would be valuable to him, and as a consequence I took no pains, whatsoever, after that to point out to him that a trial date had been set in court, and did not realize that he was unaware of it.

The Court: I want the record to show that Mr. Trabucco did not undertake to impose either upon the court or upon counsel in proceeding as he did proceed, and certainly no criticism can be directed toward him or toward the clerk of the court. I believe that all litigants should have their day in court. We all do. We still have a trial in accordance with the rules. Mr. Trabucco is not opposing that motion.

Tuesday, March 11, 1947

The Court: Barili vs. Bianchi.

You may proceed, gentlemen, in this case.

Mr. Trabucco: I would like to offer a stipulation at this time as to the use of printed copies of patents, rather than certified copies. Mr. Franklin stipulated to that effect by letter already. [1*]

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Franklin: That is agreeable.

The Court: That may be the order.

Mr. Franklin: If your Honor please, one of the defendants, Pete Mada, doing business as Meda Bros., they are in Sacramento, and in the short time we had to go to trial, we couldn't complete our investigations as to the infringement there. They denied infringement and we will have to see witnesses in Sacramento before we could proceed against them.

The Court: I am willing, counsel, to hold the matter over so you might pursue any additional matters against that defendant. I see no reason, however, to complain of the shortness of time in this case, because it has been before the court, and I feel actual notice was given. In the matter of giving the formal written notice, in my opinion, was an oversight perhaps on the part of the clerk of the Court. At the same time, I feel you had notice. But I will grant you the time. I am not going to foreclose you.

Mr. Trabucco: I would suggest, your Honor, the plaintiff must have had some information concerning this alleged infringing device in Sacramento. I suggest he put his case on as to that——

Mr. Franklin: We had some information, but that witness is not available at this time, so——

Mr. Trabucco: It is rather important to the defendant. We can't go ahead and commence suit against a defendant, unless [2] you know whether the device he is manufacturing or using in an infringement. You must have had some information.

Mr. Franklin: We did. We can't get hold of that witness, and I am agreeable to dismiss that without prejudice, if that is agreeable to the court.

The Court: Motion granted.

Mr. Franklin: I suppose your Honor is familiar with this machine to a certain extent.

The Court: In a general fashion, yes.

Mr. Franklin: I will offer in evidence a printed copy of the patent in suit as the plaintiff's exhibit.

The Court: It may be received and appropriately marked Plaintiff's Exhibit No. 1.

(The document was received in evidence and marked Plaintiff's Exhibit 1.)

Mr. Franklin: The machine is a patented machine, is a stuffed pastry machine, and particularly useful for making ravioli. It introduces two slabs of dough between two rollers and the filling goes in between the two slabs of dough, and on these rollers there is a mold so they can be pressed and contain the filling, and then they are cut by those rollers into squares, making the ravioli. That is the general description of the machine. It isn't complicated, and I think by a careful reading of the specifications, your Honor won't have any difficulty in understanding it. And they have [3] annular cutters on one of the rollers which cuts the dough in one direction, and axial cutters on another roller which cut the dough in another direction, at right angles to the first cutters, which cut it into squares, and that is the shape of the ravioli. The annual cutters are indicated by the numerals 13 and 14. The axial cutters indicated by 15 and 16. They are on the rollers,

forming rollers, which are indicated, I think, by the numerals 11 and 12, and in one of the rollers there are depressions which form the molds, and I think they are indicated 11-A and 11-B. That generally, is the construction of the patent in suit.

There were some interrogatories and answers to interrogatories. I would like to offer those interrogatories and answers in evidence. Is there any objection?

Mr. Trabucco: The only objection we have to the introduction of the interrogatories and answers into the record at this time is that the drawings shown in the answers are not in accordance with the constructions manufactured by the defendant Bianchi, and unless proof is made that he manufactured a construction such as that shown on the drawings, the plaintiff can't prevail here. So, I would suggest they be introduced for the purpose of identification.

The Court: That may be received for the purpose of identification.

(The documents referred to were marked Plaintiff's Exhibit 2 For Identification.) [4]

ARTHUR E. BARILI

called as a witness on his own behalf; sworn

The Clerk: Q. State your name in full to the court. A. Arthur E. Barili.

Direct Examination

By Mr. Franklin:

Q. You are the plaintiff, Arthur E. Barili, in this suit? A. Yes, sir.

(Testimony of Arthur E. Barili.)

Q. You are the patentee in the Letters Patent in suit, No. 1,844,142? A. I am.

Q. Have you sold or assigned any interest in your patent? A. No.

Q. You are the sole owner of the patent?

A. Yes.

Q. Will you state briefly the advantages of your machine over other machines known at the time you invented your ravioli machine?

A. Yes. The way they used to make ravioli before the most advanced method was to produce the two sheets of dough to the proper thickness, lay them on a table, fill it by hand, and one of the sheets—and then cover with another sheet, and then either run the roller, the cutting rollers over those sheets, or run the board with the sheet on under the rollers.

Q. How were ravioli made before you produced your machine? [5]

A. Just the way I explained.

Q. What that by hand? A. Yes.

Q. Did you know of any machine that produced ravioli prior to your machine?

A. There was one made in Italy, and I don't remember if it was patented or not, but it was an entirely different construction than the system I used. I invented my machine after that. The way my machine work, it reduces the sheet, roughly sized, reduces the sheet to the proper thickness, and fits them, forms them, and cuts them all automatically without any hand operation.

(Testimony of Arthur E. Barili.)

Q. Is your machine entirely automatic after placing the dough and the filling into the machine?

A. Yes.

Q. Do you know whether that machine in Italy was ever used in the United States? Did you ever see one in this country?

A. Yes.

Q. You say it was of a different construction?

A. Yes, entirely different.

Q. Was it automatic?

A. Well, not entirely, because of the sheet—instead of using two sheets, you use one, and that had to be of the proper thickness, and it made individual ravioli, and it worked in the system of a punch press, and not to lay the dough on. It was of the other—one layer only and fold over.

Q. Was that a different principle of operation?

A. Yes, entirely different.

Q. The defendant, Superba Packing Company, Ltd., one of the defendants in this case, did you see a machine, that ravioli machine that was operated by that company? A. Yes.

Q. Do you know who made that machine?

A. Mr.—

Mr. Trabucco: Just a minute, your Honor. I think the time and the place should be stated. There are a lot of machines in use.

The Court: Will you lay the foundation?

Mr. Franklni: Yes.

Q. About what year was that, Mr. Barili?

A. It was about six months prior to the issue of my patent. The date is on the patent copy.

(Testimony of Arthur E. Barili.)

Q. While your patent was pending?

A. Yes.

Mr. Trabucco: I also object, your Honor, to any testimony in this matter which is within the statute of limitations, October 6, 1940. Any evidence concerning machines made prior to that time should not be introduced in this——

The Court: This conversation as between the Superba Packing Company and this company occurred when?

Mr. Franklin: I asked him when he saw this particular [7] machine.

The Court: I will allow it. It is a preliminary question.

Mr. Franklin: Q. When was it? You say prior, or while your application was pending? What year, do you remember what year?

A. I think it was in 1932. The date is on that patent copy.

Mr. Franklin: I agree that was more than six years prior to the filing of this suit, but that limitation only goes to the question of damages. It does not go to the question of injunction, and, anyway, the Superba Company has recognized that there was an infringement, and they have consented to judgment without damages.

The Witness: This was before that.

The Court: Before what? 1932?

The Witness: The machine—my attorney— It is not the machine that is in this case. Another machine in this case.

(Testimony of Arthur E. Barili.)

The Court: What has that to do with this case?

Mr. Franklin: Q. Do you know who made that machine? A. Yes, Mr. Bianchi.

Q. One of the defendants in this suit?

A. Yes.

Mr. Franklin: That ties that up. [8]

Q. Did you secure a judgment against the Superba Packing Company for infringement on that Bianchi machine? A. Just recently.

Mr. Franklin: Yes. I will offer a certified copy of the judgment in evidence.

Mr. Trabucco: I don't see where that has any bearing on this matter, at all, your Honor. The offer for judgment was made by the attorney for Superba, with the provision that the judgment be taken against Superba, and that the costs incurred by Superba would be paid by the plaintiff, which were apparently paid to them. That has nothing to do with the issues involved in this matter between Marlo, the packing corporation, and Bianchi. That judgment is part of the record here.

The Court: What claimed relationship is there?

Mr. Trabucco: It is not *res adjudicata* as far as these defendants are concerned.

The Court: What is your purpose?

Mr. Franklin: He made a mistake there. That wasn't the judgment I intended to introduce. That is a judgment against the Riviera Company, so I will have to withdraw that particular judgment.

Mr. Trabucco: As far as the judgment against Riviera is concerned, it has no effect on the merits

(Testimony of Arthur E. Barili.)

of this case, either. That was a consent decree, that was entered under duress in [9] that particular case.

The Court: This appears to have been a stipulated decree. This affects the Riviera Packing Company and Giordano, Raymond and Robert.

Mr. Trabucco: That was a consent decree, and that is not *res adjudicata*, your Honor.

The Court: I will sustain the objection.

Q. (Mr. Franklin): On that judgment of the Superba Packing Machine Company, that is a judgment in this case, and it has already been rendered. Do you know what machine that judgment involved?

A. Yes, second machine Mr. Bianchi made for the Packing Company.

The Court: Speak up just a little louder. It is difficult to hear both of you gentlemen. Mr. Trabucco, can you hear this testimony?

Mr. Trabucco: Yes.

Q. (Mr. Franklin): That machine was a Bianchi machine? A. Yes.

Q. Made by the defendant Bianchi in this case?

A. Yes.

Mr. Franklin: Of course, Bianchi is sued individually and sued jointly and severally, and that is a machine that the defendant made, and I don't see why that isn't relevant. Of course, that is a consent decree judgment, but we don't make consent judgments unless there is some ground or reason [10] for it, so I think——

Mr. Trabucco: That settlement, your Honor, was made during the time of the war, and this suit was

(Testimony of Arthur E. Barili.)

commenced against Superba, the Riviera Manufacturing Corporation. They had a Government contract. They were making a great deal of money, and this suit was commenced against them, and they, rather to take chances of being closed down, they settled for \$3500, and certainly the settlement in that matter is not *res adjudicata* here.

The Court: It would not be considered by the court.

Mr. Trabucco: As a matter of fact, this machine was made prior to the six-year period anyway.

Mr. Franklin: That was the Superba machine.

The Court: What is the purpose of your showing with respect to the Superba Packing Company?

Mr. Franklin: That is evidence of infringement. That was admitted in the judgment. It admits infringement, admits the validity of the patent. While it is a consent decree, it is relevant and, you might not say it is conclusive.

The Court: Neither the defendant Bianchi nor the Marlo Packing Company, or both of them were parties to that stipulation, were they, respecting Superba?

Mr. Franklin: Bianchi wasn't a party to that judgment, no. He took no interest in it. He didn't defend the suit. I will therefore offer this judgment against the Riviera Packing [11] Company in evidence. That was ruled out. I will offer it again.

Mr. Trabucco: I still object to that, your Honor. That has nothing to do with the merits of this case. The parties here were not parties to that suit. Fur-

(Testimony of Arthur E. Barili.)

thermore, that was an uncontested matter, a consent decree, and certainly it isn't *res adjudicata* as far as these defendants are concerned, and I don't see how it can prove any of the issues.

The Court: I cannot see how you intend to prove any of the issues in this case.

Mr. Franklin: It is evidence of infringement.

The Court: Affecting other parties not related from point of time or sequence, logically or otherwise. I will sustain the objection.

Mr. Franklin: The time was——

The Court: The foundation is imperfect, and you just can't offer vagrant papers to this court without any logical or legal relevancy.

Mr. Franklin: This was entered October, 1945. That was after the war. That wasn't during the war. So, while I won't say——

The Court: Let's proceed against the defendants Bianchi and Marlo Packing Company, the defendants on trial.

Mr. Franklin: This is evidence of infringement. It is admissible on the ground of——while it may not be *res* [12] *adjudicata*, nevertheless it is evidence of infringement, and that is all I am offering now, evidence of infringement.

Mr. Trabucco: That is no evidence of infringement. Certainly, Marlo had nothing to do with that infringement, at all.

Mr. Franklin: Marlo didn't but Bianchi did. Bianchi made this machine.

Mr. Trabucco: It certainly isn't *res adjudicata*. He had no knowledge, whatsoever, of this suit. He

(Testimony of Arthur E. Barili.)

didn't have any chance to examine the proceedings, nor make his investigation as to infringement or anything else in connection with it.

The Court: The objection is sustained.

Mr. Franklin: The information is he did have knowledge of it and refused to cooperate—

The Court: I have sustained the objection.

Q. (Mr. Franklin): I have a circular here. I will hand you a circular here, and will you state what that is, Mr. Barili?

A. This is a circular describing the productions of ravioli of the Riviera Packing Company. It shows parts of the process, and includes descriptions of their ravioli machine made by Bianchi.

Q. Is there an illustration there of the Bianchi machine?

A. Yes, there is a photograph here.

Q. Will you point that out to the court?

The Court: What is this, counsel? [13]

Mr. Franklin: The Riviera Packing Company circular, with the Bianchi machine they use.

The Witness: The description of the machine, how it works. Describes how the machine performs.

Q. (Mr. Franklin): Is that the machine which was involved in that suit against the Riviera Packing Company? A. Yes.

Q. Did you meet those workmen whose pictures appear? A. Yes.

Q. Did you have a conversation with them?

A. Yes, they were down at my factory, to check up on my machine.

(Testimony of Arthur E. Barili.)

Mr. Trabucco: That is objected to as hearsay.

The Court: Sustained.

Q. (Mr. Franklin): Did they tell you they operated that machine? A. Yes.

Mr. Trabucco: Objected to as hearsay.

The Court: Sustained.

Q. (Mr. Franklin): Do you recognize that as a Bianchi machine? A. Yes.

Mr. Trabucco: Just a minute, your Honor. The interrogatories in this matter state that the first indication that he ever had of the Bianchi machine was in 1946, I believe it was. [14]

The Court: Interrogatory No. 1 or 2, as I recall.

Mr. Trabucco: Yes. He states he is familiar with this machine which apparently was made prior to 1940. He also states that he had first knowledge of Bianchi's activities in 1932. I can't quite understand how the witness can testify.

The Court: You might cross-examine him on that subject, counsel.

Mr. Trabucco: All right.

Q. (Mr. Franklin): The machine that Superba was using, that small machine, did you see that machine?

A. I only seen the rollers of that machine, the castings. As Mr. Bianchi told me, it was an experimental machine, and I later found out that there was a plate in the machine over here, saying this is the model of the machine—no, model of the Superba Packing Company machine made by Bianchi.

(Testimony of Arthur E. Barili.)

Mr. Trabucco: That testimony is hearsay.

The Court: It is hearsay.

Q. (Mr. Franklin): Did you discuss these rollers with Mr. Bianchi personally, himself?

A. Yes.

The Court: When? Let's have the time, the place, the parties present, so I can have some coordination or degree of coordination with respect to this evidence.

The Witness: It was about within six months prior to [15] the date of that patent.

The Court: Which patent, the one in question?

The Witness: The patent that is involved in this infringement.

The Court: In this alleged infringement?

The Witness: Yes.

The Court: And the date of that is 1932, is it not?

The Witness: Yes, sir.

The Court: The effective date?

The Witness: Yes, sir.

The Court: It was before that that you had a discussion with Bianchi?

The Witness: Yes.

The Court: Six months before?

The Witness: Within six months.

The Court: All right.

Q. (Mr. Franklin): You saw that first machine Superba had in 1932. Did you take any action against Mr. Bianchi at that time?

(Testimony of Arthur E. Barili.)

A. No, we settled. I settled with Superba out of court, and then I went over to Mr. Bianchi and he says—I didn't go over there with the intention of collecting anything. He says, "Don't you come over here and try to collect, because you only collect on one side." I says, "That's all right." He says, "I am not going to make any more of those machines, anyway." [16] He says in effect, "I have the experimental machine here, two rollers, same diameter as the machine over at Superba, only shorter." Made in the same manner. And he says, "if you want them, you can have them." And I told him no, because I used smaller size than that, in diameter. So that's the way it was left. Later, I found out that they were using this machine at the World's Fair.

Q. This machine used at the World's Fair, was that the same machine that you saw first, or was that a different machine?

A. The same machine Bianchi show me in the shop. It wasn't a complete machine, but assembled in such a manner, good enough to experiment, to find out if it works good enough, so he can make a larger roller, to make the machine for Superba Packing Company.

Q. Was that a small machine? A. Yes.

Q. That wasn't the actual machine that Superba had?

A. No, not at that time. That was another machine.

Q. He promised not to use that?

A. Yes.

(Testimony of Arthur E. Barili.)

Q. Then later did you discover whether he had used it, or not, after that?

A. Just drolled it up and plate it and use it over here at the Fair.

Q. When did you learn of that? [17]

A. During the World's Fair.

The Court: The date?

The Witness: That I don't know. It was in the World's Fair sometime.

Mr. Franklin: Will you describe how the rollers were constructed?

A. Exactly the same as——

Mr. Trabucco: I object, your Honor, he is going into the construction of this machine which was apparently made in the Thirties and used in 1939, and never in possession of Bianchi or Marlo since 1936, I think it is, so I can't see how this evidence is relevant at all.

Mr. Franklin: It is a basis for an injunction, your Honor, and we have an injunction against Superba Company.

Mr. Trabucco: There can't be an injunction unless there is infringement, and there certainly isn't an infringement in this case, especially since the statute of limitations has taken effect.

Mr. Franklin: The statute of limitation only relates to damages. It doesn't relate to injunction, making that machine.

The Court: I will allow it, counsel. I will allow the question.

Mr. Franklin: Very well.

(Testimony of Arthur E. Barili.)

Q. Describe the construction of the rollers, Mr. Barili.

A. Two rollers. On one roller there is a series of molds all [18] the way around the rollers and extra cutters. And also on the other roller with annular cutter. That is the two rollers.

Q. Yes.

A. And a hopper to feed the dough between the two sheets of paste—I mean to put the filling into the two sheets of paste, and had means—In other words, two sets of roller on each side to reduce and feed the sheets of dough right on the hopper over the forming and cutting rollers.

Q. When you speak of axial cutters, what do you mean? A. Longitudinal.

Q. The axis of the roller? A. Longitudinal.

Q. Annularly around the roller?

A. That's right.

Q. Did it have a hopper? A. Yes.

Q. Was there a weight in the hopper?

A. Which machine?

The Court: For feeding?

The Witness: On which machine?

Q. (Mr. Franklin): The Superba.

A. Pushing it down with 2x4 by hand occasionally.

Q. Was there any way of adjusting the hopper up or down on that machine?

A. Yes, kind of holes, so they can raise it or lower it. [19]

(Testimony of Arthur E. Barili.)

Q. That drawing which was in the interrogatories—

The Court: That is your drawing?

Mr. Franklin: The drawing we furnished.

Q. Is that a drawing of the Superba machine?

A. Yes, sir.

Q. Is that correct, to the best of your ability?

A. It shows the principle as much as I could put it on paper. Of course, it might be a difference in the looks of it as far as the guards or something like that, but that won't change the element. The element is the same. In other words, the roller might be a little higher or lower, different angle than what it was there, but the same purpose, more or less, the same principle.

Mr. Franklin: I will not continue with Mr. Barili now. I may wish to recall him.

The Court: We will take a short recess, gentlemen.

(Recess.)

Mr. Franklin: If your Honor please, Mr. Trabucco agreed to defer cross-examination of Mr. Barili at this time, so that we can put on a witness we subpoenaed who is superintendent for the Marlo Packing Company. He would like to get back to his business.

The Court: You may withdraw the witness. [20]

HERBERT GIERTH

called as a witness on behalf of plaintiff; sworn

The Clerk: State your name to the court.

A. Herbert Gierth.

Direct Examination

By Mr. Franklin:

Q. What is your occupation, Mr. Gierth?

A. I am superintendent of the Marlo Packing Company.

Q. The Marlo Packing Company, one of the defendants in this suit? A. Yes.

Q. On about July 11, 1946, did you have a conversation with Mr. Arthur Barili, the plaintiff in this suit?

A. Yes. About this time, he came to our place to sell a machine, ravioli machine.

Q. Came to the Marlo Packing Company?

A. Yes.

Q. Do you remember what the conversation was?

A. He spoke in general about new patents and new ideas in the manufacture of ravioli. Outside that old type of machine I had seen years ago, I didn't learn anything new. So, when Mr. Barili left, we had a machine, and I told him we had used years ago—Bianchi's ravioli machine.

Q. Did you state that you had just bought a new machine from Bianchi? A. No.

Mr. Trabucco: If the Court please, I have these photographs [21] of that machine. If it would help you in any way to conduct this testimony, I will be glad to let you have them.

(Testimony of Herbert Gierth)

Mr. Franklin: I would like to look at them.

Q. Did you tell Mr. Barili that you had bought a machine from Bianchi that was just like Mr. Barili's machine, only twice as wide?

A. No, not at that time. There was no occasion of saying that. In fact, I didn't know this.

Q. Did you state you had thought one machine four or five years ago like Mr. Barili's machine, only twice as wide?

A. I told him we bought this ravioli machine from Mr. Bianchi shortly before the war broke out. This machine probably has been in use about half a year prior to the outbreak of the war, and then we discontinued it, because we are going into Army and Navy contracts, and has not been used since that time, and still is not in operation today.

Q. Do you know the construction of that machine?

A. Very familiar with it.

Q. How are the rollers constructed?

A. One roll has all the molds and the molding and impression, and the other roll has the cutters, cross and lengthwise.

Q. Lengthwise and crosswise?

A. Crosswise.

Q. Do you remember whether the Bianchi machine, whether there was some difficulty about the scrapers on it? [22]

The Court: About what?

Mr. Franklin: Scraper.

(Testimony of Herbert Gierth)

The Witness: There weren't any scrapers on it, as far as I remember.

Q. (Mr. Franklin): Do you remember sending that machine back to Bianchi's shop?

A. It was necessary, yes, because the machine stood in this place for about three years in steam and water, and in an idle condition. It had to be brought back and readjusted and cleaned up, polished up.

Q. There was nothing wrong with the scraper?

A. Nothing wrong with the scrapers. Nothing wrong with the machine, at all, outside it needed cleaning.

Q. Just to clean it? A. Yes.

Mr. Franklin. That will be all. You may cross-examine.

Mr. Trabucco: No questions.

(Witness excused.)

ARTHUR E. BARILI

recalled.

Direct Examination
(Resumed)

By Mr. Franklin:

Q. Mr. Barili, do you recall a conversation in the summer of 1946 with Mr. Gierth?

A. I do.

Q. Will you state what the conversation was?

(Testimony of Arthur E. Barili)

A. Well, talking about this machine, here, and he said, he suggested to call up Marlo Packing Company. He said, "They are expanding. Maybe they need some more machines." And I remember I sold them a machine before that. So I called them up and asked for Mr. Ansra. He was the only person I knew there, and he was out, so they got Mr. Gierth on the phone.

The Court: Who?

The Witness: The witness here, Gierth.

The Court: The last witness?

The Witness: And I told him who I was, and that I sold them a machine a long time ago, and I heard he was expanding his business. I asked him if he was in need of more machinery of that kind, and he says no. He says, "We don't need no machinery for ravioli," he says. "We had one made," he says, "just exactly like yours, and twice as wide." I says, "Where did you get that, made by Bianchi?" He says, "Yes." So, I says, "Well, I come down to see you anyway." I went down there two days after. Mr. Ansara was there in the office and he come up, and Mr. Ansara, he says, "What is wrong with you? You make a machine for 25 years. You never improve on it." He says, "Can't you make a machine that does the whole thing, mix the dough," and this and that. I says, "It can be made."

Q. (Mr. Franklin): Mr. Barili, talk a little louder.

(Testimony of Arthur E. Barili)

The Court: Half of this, I am satisfied, the reporter is not getting. I can't hear it. You drop your voice. If you [24] keep your voice up I will hear the testimony. I have asked you three times.

The Witness: He says, "Who owns this patent, anyway, who owns the patent of the machine?" He says, "Bianchi, Mr. Bianchi claimed he owned it, and you claim you own it." I says, "It is my patent, and besides that, you know I own the patent, because the number of the patent is cast on the frame of the machine I sold you." Then I asked Mr. Gierth, I says, "Where is the machine anyway? He says, "It is down at Mr. Bianchi's shop." I says, "What is the reason?" "Well," he says, "We haven't been using it for quite a while," he says, "five or six months." He says, "My trouble is with those scrapers," he says, "and that is all." Then we got into talking about making something else for it which he would figure on it. Wrote to them about it and never heard from them.

Q. (My Franklin): Was that all the conversation?

A. Yes, except something that perhaps don't pertain to this case. Just about new machinery. He was complaining of getting prices on and different times. In other words, another machine with a series of rollers he was interested in. So you put in the dough about as it come out and reduce it all automatically without going through—

Q. You say he said the machine was exactly like yours, only twice as wide? [25]

(Testimony of Arthur E. Barili)

A. He says exactly like mine, only twice as wide.

Mr. Franklin: All right.

The Witness: That is the only reason I wrote to him after that.

Cross-Examination

By Mr. Trabucco:

Q. Did I understand you to say Marlo Packing Corporation had purchased a machine from you?

A. Yes.

Q. When was this:

A. I think it was about 1933 or something like that. I don't recall. Quite a long time ago. In fact, I asked him what they did with it. He said they sold it. Mr. Gierth told me they sold it. Mr. Ansara said they changed it for other equipment.

Q. Where is your place of business?

A. 716 North Broadway, Los Angeles.

Q. What type of business are you engaged in.

A. Manufacturing of ravioli machine, tool and dies, experimental.

Q. You own the plant where your business is located?

A. I own the plant.

Q. Do you own it? A. Yes.

Q. You are the sole owner of it?

A. Yes.

Q. What other products do you make other than ravioli machines? [26]

A. Developing of inventions, tools and dies.

Q. In your answers to the interrogatories, you were asked under interrogatory No. 1:

(Testimony of Arthur E. Barili)

“State when plaintiff first learned of the alleged infringement by defendant Achille Bianchi of the patent in suit?”

Your answer to that interrogatory was: “About July 15, 1946.” How do you reconcile that sworn statement to the testimony you have given in this matter as to having known Bianchi and seen the machine and discussed the machine with him in the early Thirties?

A. I don't get that very clear. I remember when I built the machine, when the Bianchi machine was for the Superba Packing Company. The Marlo machine, I learned about that last July, July a year ago, 1946.

Q. You are familiar with the interrogatory that was asked you at that time, and that is here filed and served on your attorney, aren't you?

A. I think I read it up to me.

The Court: Read it to the witness.

Q. (Mr. Trabucco): “State when plaintiff first learned of the alleged infringement by defendant Achille Bianchi of the patent in suit?” And your answer was: “About July 15, 1946.”

A. Yes, that particular machine, that Marlo Packing machine, [27] that is when I learned about it.

Q. There is no mention here as to the Marlo Packing Company machine, is there? There is no specific reference to that machine in this interrogatory?

(Testimony of Arthur E. Barili)

A. Bianchi. The patent in suit is the particular machine that was made by Bianchi. I didn't know that he made any more machines after I seen those rollers, that he made a machine for the Superba Packing Company, I didn't know anything about it until I come up here. I didn't know he was still infringing, because I offered to pay him commission or get the little license fee, if he can make them. He says, "No, I won't make any more."

Q. As a matter of fact, you knew of the activity of the defendant Bianchi in the manufacture of these machines in the early Thirties, did you not?

A. First started, yes, but he told me he was stopping.

Q. Notwithstanding that knowledge, you didn't commence suit against Bianchi, did you?

A. No suit against the Superba Packing Company.

Q. What prompted you to commence suit at this particular time against defendant Bianchi and the Marlo Packing Corporation?

A. Because I found out he was still making those machines.

Q. You knew about it in the Thirties, did you not?

A. He told me then that he wasn't going to make any more. It was a gentleman's agreement. [28]

Q. Your testimony goes to the knowledge of having seen the machine that was manufactured in 1937, I believe it was, for the Superba Company. If you thought there was an infringement, why didn't

(Testimony of Arthur E. Barili)

you commence suit at that time against Bianchi? Why did you want seven or eight years later to commence suit? A. 1937?

Q. 1939 or whenever it was. 1939, I believe it was. Why did you wait seven years to commence suit?

A. I assume on this machine, here, the Superba Packing Company already settled with them—with him, I assume, because I found out he made the machine for Marlo Packing Company, this machine, here, for the purpose of injunction, this little machine is made for the Superba Packing Company.

Q. Do you know when this machine was made?

A. Which one?

Q. For the Marlo Packing Corporation.

A. Mr. Gierth told me.

Q. When?

A. Last year when I talked to him. He says, "We have a machine made between—little over five years ago," and he says, "We haven't used it for about six months.

Q. As a matter of fact, that machine was manufactured in 1939, was it not?

A. I don't know. The last year, 1946, he says, "We have [29] this machine here for about five years," and he says, "We haven't been using it for six months now."

Q. When did you first learn of the use by Marlo Packing Corporation of this machine?

A. July 15, last year, 1946.

(Testimony of Arthur E. Barili)

Q. You saw the machine?

A. I haven't seen that machine, no.

Q. You are not familiar with its construction?

A. No. He told me—Mr. Gierth told me exactly the same as the one sold to them.

Q. You do not know whether it infringes this patent, or it, if not having seen it? A He told me that, "I am sure it is exactly like mine," so it is an infringement.

Q. You, of your own knowledge, do not know whether it infringes your patent, do you?

A. Well, the only thing I know about it it infringed my patent is because he told me it is exactly like mine. If it is exactly like mine—

Q. You just examined the photographs of that machine, did you not? Would you say that is exactly like your machine. A. I don't know.

Q. I will show you the photographs of the machine used by Marlo Packing Corporation and ask you if that is the machine which you consider an infringement on your patent.

A. According to what I know, this is not the machine of the [30] Marlo Packing Company, because Mr. Gierth told me the scrapers—he says, "What happened? What happened to those scrapers?"

Q. I am asking you if this machine, if you would consider this an infringement of your patent

A. The general construction is exactly the same, the feeding of the dough, the means of conveying the dough into the center roller is the same. He has

(Testimony of Arthur E. Barili)

a hopper in there. I don't know if he changed this, the same thing, or not. According to this picture here, there might be something to infringe my patent, or there might not.

Q. Which claims, if any, would you consider infringed by this machine?

A. Is this the Marlo Packing machine?

Q. Yes.

A. The Marlo Packing machine?

Q. Yes, the Marlo Packing machine. What claims, if any, do you consider infringed?

A. It isn't very clear to me as to the claims

Mr. Franklin: I think I will object to that question.

The Court: Objection overruled.

Mr. Franklin: You asked the witness whether it infringes a claim. That involves a construction of the claim.

The Court: Which he claims.

The Witness: I am not a patent attorney.

Q. (Mr. Trabucco): You have made the statement that is an [31] infringement of your patent.

A. As he described it to me, yes. He described it to me.

Q. This is the machine that was referred to?

A. Not as you referred to. As you described to me.

Q. Are you in a position to state whether or not it is an infringement of your patent?

A. This? Q. Yes.

A. If it is the machine over there, it has been changed.

(Testimony of Arthur E. Barili)

Q. I am asking you whether that machine is an infringement of your patent

A. I am not a patent attorney.

Q. You commenced a suit here, and you have charged an infringement. You put these defendants to considerable cost..

A. Yes.

Q. You must have some knowledge of whether or not that is an infringement.

A. The attorney of the Superba—I mean of the Marlo Packing Company, come down and told me it was an infringement of the Superba—I mean the Riviera.

The Court: Is that the only basis for the claim, the statement which is apparently hearsay from the attorney for the Riviera Packing Company that there was an infringement here? Is that that the only basis for your claim?

The Witness: Yes. [32]

The Court: The only basis?

The Witness: Yes.

The Court: You are an engineer, are you?

The Witness: Not an engineer, no.

The Court: Are you skilled in engineering matters?

The Witness: Yes.

The Court: And the engineering craft?

The Witness: Yes.

The Court: You constructed the original machine, did you?

The Witness: Yes.

The Court: Applied for your basic patent?

The Witness: My attorney.

(Testimony of Arthur E. Barili)

The Court: You prepared the drawing, did you, in question, which is attached to your interrogatory? The Witness: Yes.

The Court: You prepared that drawing?

The Witness: Yes.

The Court: That purports to delineate on its face the construction of the ravioli machines in question which you claim to have been infringed?

The Witness: Yes. The fact that Mr. Gierth told me it was exactly the same as mine, therefore it is exactly the same, because that is a drawing of the Superba Packing Company machine.

Q. (Mr. Trabucco): You heard Mr. Gierth's testimony, did you not, to the effect that in this machine that is now in use, made by Bianchi, the cutters are all on one roller. You heard that testimony?

A. But he did not say that to me. He said entirely different to me.

Mr. Trabucco: I believe that is all, your Honor.

Mr. Franklin: Just a moment, Mr. Barili.

Redirect Examination

By Mr. Franklin:

Q. You were asked on what you based your opinion that there was an infringement of the patent in suit, and if what some attorney had told you was the only basis of it. You had a conversation with Mr. Gierth? A. Yes.

Q. And I would like to know if you based your opinion of the infringement on the Marlo

(Testimony of Arthur E. Barili)

Packing Company on your conversation with Mr. Gierth? A. Yes.

Q. You learned about the manufacture of the machine for the Superba Company back in 1933, and do I understand you to say that had been settled? A. Yes.

Q. You gave the Superba Company a license to go ahead with that machine, did you not?

A. I did.

Q. You had a conversation with Mr. Bianchi at that time about [34] manufacturing that machine and there was some agreement reached?

A. Yes.

Q. And what was that agreement?

A. The agreement was that he says he wasn't going to make any more, and he had this roller that he used in the Superba, the second Superba machine. He says, "You can have this, because I don't use them." He says, "I am not going to make any more of these machines." So I told him, "Well, I says, "I don't see why you should, provided you get a license from me and you give me a reasonable fee for every machine you build. Otherwise, you can send me the order and I pay you commission." He says, "That is fine." And I told him when I got back to Los Angeles I am going to send you photographs, and I never heard from him since.

Q. When did you learn that Bianchi had built this second machine after that agreement was made, when he promised not to manufacture any more?

(Testimony of Arthur E. Barili)

A. Well, that was about the time of the World's Fair. He had part of it built before that, the rollers, and just put it together and finished it up, embellished—in other words, plate it and put it over to the World's Fair, I think for the Superba.

Q. When did you learn about the use of the machine by Marlo?

A. On or about July 15, 1946.

Mr. Franklin: You may further cross-examine.

Recross-Examination

By Mr. Trabucco:

Q. You say you were the first to manufacture an automatic ravioli machine. Are you correct in that statement? A. That I manufactured?

Q. Yes. You were the first to manufacture a machine of that type, didn't you make that statement a while ago?

A. Of that type, yes.

Q. I will show you a print of a number of automatic ravioli machines which was published prior to the First World War, and ask you on that sheet of paper if you don't see a number of different types of ravioli machines somewhat similar to yours?

The Court: We have reached the noon hour. At the resumption at two o'clock, we will go into the matter extensively. We will take the usual noon recess until two o'clock.

(A recess was taken until two o'clock p.m.)

Afternoon Session
Tuesday, March 11, 1947

ARTHUR E. BARILI

resumed the stand.

Recross-Examination

(Continued)

Mr. Trabucco: Read the last question.

(Last question read by the reporter.)

Mr. Franklin: I would like to see the date of publication on that, if you say it is published prior to the last war.

Mr. Trabucco: There is no date of publication on it, your honor, but we will connect it up through Mr. Bianchi, who secured it in Italy after the last war.

The Court: Subject to that showing you may answer the question.

The Witness: Yes, I seen one, but it wasn't published before the First World War.

The Court: That is a matter of showing on the part of counsel. He stated he would connect it up. Do you see one that resembles it?

The Witness: It doesn't resemble mine.

The Court: Similar to it?

The Witness: No. Yes. The picture of it in itself doesn't resemble mine, but the elements in there are very close to it. In fact, a patent was rejected on this in Italy on account of a patent I had prior to this—the application—and they turned around and patented it in France. [37]

(Testimony of Arthur E. Barili)

The Court: Would you answer counsel's question? That is the answer, I assume.

Q. (Mr. Trabucco): You had in the old machines that were manufactured in Italy in 1915, say, devices which cut the ravioli, sealed the edges, and prevented the interior part of the ravioli from escaping through the sealed edges, is that not true?

A. Yes, but that it was made in 1915.

Q. The statement you previously made to the effect that you were the first to make an automatic ravioli machine is not true?

A. It is true, because this machine here was made after mine.

Mr. Trabucco: That is all.

The Court: You refer now, so the record may be clear to a specific illustration?

Mr. Trabucco: I will introduce this for identification.

The Court: It may be marked for identification.

(The document referred to was marked : Defendants' Exhibit A for Identification.)

Mr. Franklin: I will object to that.

The Court: Objection overruled.

Mr. Franklin: If it is offered for the purpose of invalidating——

The Court: He is showing prior art.

Mr. Franklin: The state of the art. Very well.

Q. (Mr. Trabucco): Did I understand you to say that the drawing which accompany your answers to defendants' interrogatories were made from the small experimental ravioli machine?

(Testimony of Arthur E. Barili)

A. No. It was made from the last machine made by Bianchi over at Superba, the one that is now in actual use.

Q. And it was made from your recollection of that machine, was it? A. Yes.

Q. In your answers to the interrogatories, you stated that was the Marlo machine.

A. Mr. — what is the name? The witness that was over here, he told me it was exactly the same.

The Court: Mr. Gierth?

The Witness: That's right.

Q. (Mr. Trabucco): You were asked in Interrogator No. 7,

“Precisely where in the alleged infringing devices of Achille Bianchi and Marlo Packing Corporation is there found the features set forth as new and patentable in response to paragraph 6 hereof?”

In answer you submitted these drawings. Where does the Marlo Packing Corporation fit into this picture?

A. The Marlo Packing Corporation fits into that because Mr. Gierth told me it was exactly like my machine—my machine I had over there, so that is it. Besides that, it is exactly [39] the same as the one I got, exactly the same as the one with the Superba Packing Company.

Q. The drawings were made from your conversation with Mr. Gierth, is that true, rather than from an inspection of the machine which was in the possession of Marlo Packing corporation?

(Testimony of Arthur E. Barili)

A. Yes, he explained me it was exactly like mine, only twice—larger. And from that information I deducted it is the same thing that I got.

Mr. Trabucco: I think that is all.

Mr. Franklin: Mr. Barili testified concerning a circular that was issued by the Riviera Packing Company. I had intended to offer that in evidence, and I will offer than in evidence. Any objection to that?

Mr. Trabucco: I don't believe the foundation has been laid for that document to be introduced into evidence. It doesn't show when it was printed.

The Court: Is this it?

Mr. Franklin: That is it. I didn't know what had happened to that. I thought it was introduced into evidence.

The Court: I don't know in what manner this will aid the court in deciding the issues in this case. This seems to be a circular emanating from the Riviera Packing Company, I assume, having to do with their organization, showing bottles with the Riviera label thereon; a cut or a photograph showing the rolling of dough, representing the part of a machine. [40] I can't see that it will aid or help the court, counsel, in any fashion. Will you make yourself clear on that? I may be wrong.

Mr. Franklin: Mr. Barili has said that he was familiar with the Bianchi machine and he identified an illustration on there as a Bianchi machine, and that is an illustration of it. Now, I can ask Mr.

(Testimony of Arthur E. Barili)

Barili where he got that from.

Q. Where did that come from, Mr. Barili. How did you get possession of it?

A. We asked for a photograph.

Q. Asked whom?

A. The attorney for the Riviera Packing Company, and the attorney for the Riviera sent out this picture. He says it was the only they they had.

Q. He gave that to you? A. Yes.

The Court: It may be marked for identification. I will sustain the objection to the offer and offer it for identification.

(The circular referred to was marked Plaintiff's Exhibit 3 For Identification.)

Q. (Mr. Franklin): Mr. Barili, you were asked about this circular here that is marked for identification A, that cut which is entitled, "Raviolara." What do you know about that?

A. What I know about that, that I was in correspondence with [41] Mr. Mario Eccher, the name on that circular, the man that issued that circular, a few years before I got my patent. I sent some photographs if he could sell those machines over there. Well, we came to an understanding that he was supposed to pay me a certain sum for the use of my Italian patent. My patent was already issued over there. So, between the time that we were corresponding, something happened, in other words, the panic, the depression, 1932 or 1933. So he says, "We will have to resume these negotiations later,

(Testimony of Arthur E. Barili)

because we couldn't sell anything at present." In the meantime from Milan, Italy, I received a letter from a party trying to negotiate with me on the use of that patent, and he says, "I understand that somebody asked for the drawing of your inventions," and he says, "I don't know for what reason." He says, "I want to know if you applied for a patent in France," because somebody applied for a patent over here, and this machine—and he sent me a picture and he says the patent was rejected, and therefore the patent was applied in France. And the patent, I understand that it was issued on that machine in France after my patent in Italy, a couple of years after.

Q. Was this filed in Italy at the time your patent in Italy had been granted?

A. After that. After that, my patent was issued, but it was rejected over there and it was applied in France.

Q. (Mr. Trabucco): You say you made this invention in Italy? A. No.

Q. What did you say about the machine having been patented in Italy, or attempted?

A. Patented in Italy.

Q. Was this the machine that is shown on the drawing here?

A. The machine that shows on my patent here, the United States patent.

Q. The same construction as patented over there? A. Yes.

(Testimony of Arthur E. Barili)

Q. When was that?

A. Between one and two years prior to the issuance of that United States patent.

Q. When did you come into the United States?

A. Sir?

Q. When did you come into the United States?

A. 1904.

Q. Did you make your application for patent while you were in this country?

A. In this country.

Q. It was rejected in Italy, you say?

A. No. It was allowed in Italy.

Q. What year was that?

A. Well, it was—I am not sure, but one or two years before I got the United States patent. [43]

Q. Was that prior to the publication of this particular folder? A. Yes.

Q. Suppose this was published in 1916 or 1917, would it have been prior to that time?

A. It wasn't published at all—circulars. There wasn't anything published about it.

Q. Just what date was it you made your application in Italy?

A. I think it was about three or four months difference between the time I made the application in Italy and in the United States. The application—the United States application was pending for about eight years. In other words, I instructed my attorney to leave it in as as long as possible.

Mr. Trabucco: That is all.

Mr. Franklin: That is all.

Mr. Franklin: Call Mr. Cortopassi.

CARLO CORTOPASSI

called as a witness on behalf of plaintiff; sworn.

The Clerk: State your name in full to the court:

A. Carlo Cortopassi.

Direct Examination

By Mr. Franklin:

Q. What is your occupation?

A. Machinist.

Q. Where are you employed? [44]

A. Bianchi Machine Shop.

Q. Do you know anything about the ravioli machine that was made for the Marlo Packing Company.

A. I saw the machine over there.

Q. What is that?

A. You want to come closer—I mean, come close to me.

Q. All right.

A. I saw the machine. We built the machine over there.

Q. It was built in the Bianchi shop?

A. The machine was for the Marlo Packing Company.

Q. It was built in the Bianchi Machine Shop?

A. Bianchi Machine Shop.

Q. And sold to the Marlo Packing Company?

A. I don't know sold to them. From the report I saw——

Q. Did you work on that machine?

A. I did make many parts in all. The machine is pretty big, see?

Q. About what date was that, do you remember?

(Testimony of Carlo Cortopassi.)

A. The date? Q. Yes.

A. Before the war, I guess, six or seven months—six or seven years ago. More than that.

Q. Do you remember the construction of the machine, that is the rollers?

A. I remember the rollers. Explain what you want. I know what the rollers—what they are. You have to make ravioli. [45] You have to have the roller. It can go different.

Q. One of the rollers had pockets in it, had square molds in it, depressions? A. Yes.

Q. One roller.

A. One is support. Another to adjust, like go back.

Q. One roller is adjustable?

A. One is adjustable.

Q. One roller had the molds in it?

A. Yes.

Q. The other did not?

A. No, the rolls they got—they got that same shape.

Q. Do you mean that each roller had part of the mold in it, and they come together and made the complete mold? A. No.

Q. The molds were in one roller complete, is that right? A. Yes.

Q. And no molds in the other roller?

A. On both sides of that machine. The mold was on both sides.

Q. In both rollers? A. Yes.

Q. That is, half of the mold in one roller and half in the other? A. That's it.

(Testimony of Carlo Cortopassi.)

Q. When they came together, they made the full mold? A. Yes. [46]

Q. There were cutters that went around the rollers, that went around one roller—

Mr. Trabucco: This is leading, your Honor. I must object to it. It is obviously leading and not proper examination.

The Court: It is leading, Counsel.

Mr. Franklin: I just wanted to help him along.

The Witness: If you want me to make a sketch.

The Court: Make a sketch on the board.

The Witness: That is all I can do.

Mr. Franklin: You want to make a sketch?

The Witness: To explain this (indicating on blackboard). Every roller got a—

The Court: This man has to take everything you say down. Speak out so he can hear you.

Q. (Mr. Franklin): Where were the cutters, the cutters that go around?

A. No cutters.

Q. Didn't the rollers have something for cutting the dough into squares? A. No cutters.

Mr. Trabucco: That is objected to—

The Witness: They come out, pressing—come out the ravioli—to cut the ravioli.

Q. (Mr. Franklin): How do you get the ravioli into squares? [47]

Mr. Trabucco: That is objected to again, your Honor.

The Court: Objection overruled.

(Testimony of Carlo Cortopassi.)

The Witness: I am the machinist. I got the order from my boss. He give me sample, the dimensions, give me—I make. I cannot tell to you what the operation. I never went out of shop to see the machine. The boss give the dimension. I make the rollers like the boss wanted, because I just make a different part of the machine.

Q. (Mr. Franklin): You only made the rollers?

A. I made part of the rollers, because the rollers take a long time. The bench man make the machine. The man make—another man—many men work in the rollers.

Q. You never saw the machine in operation?

A. Never saw it.

Q. You never saw a ravioli come out of it?

A. No. I work all the time in the shop. I don't go out.

Q. You say you never saw any cutters?

A. No.

Mr. Franklin: That will be all.

Cross-Examination

Mr. Trabucco: I have two or three questions.

Q. Mr. Cortopassi, you say that machine you worked on was about seven or eight years ago?

A. Yes, sir.

Q. You do not know whether that was delivered to the Marlo [48] Packing Corporation or to the Superba Packing Corporation, or Meda Bros., in Sacramento, or to whom?

A. I suppose the machine to Marlo Packing.

(Testimony of Carlo Cortopassi.)

Q. How do you know? You don't know that, do you?

A. I cannot say where the machine went, because I am a machinist. The shipping clerk is something different. Suppose the machine, see, goes to Marlo Packing. It go to different parts. I am not the bookkeeper of the Bianchi Machine Shop.

(Witnessed excused.)

Mr. Franklin: Mr. Bianchi, please.

ACHILLE BIANCHI

one of the defendants, called as a witness on behalf of the Plaintiff; sworn.

The Clerk: State your name in full to the court.

A. Achille Bianchi.

Direct Examination

By Mr. Franklin:

Q. You are the defendant, Achille Bianchi, in this suit, are you? A. Yes.

Q. The defendant? A. Yes.

Q. You built a machine for the Marlo Packing Company? A. Yes, sir.

Q. Will you state what the construction of that machine was, as [49] to the rollers?

A. Yes, sir. What do you like to know?

Q. How about the molds and the rollers, for instance.

A. The mold? Q. Yes.

A. The molds are inside one of the rollers.

(Testimony of Achille Bianchi.)

Q. On both rollers?

A. Just in one, on particular, that machine there.

Q. On that model machine?

A. Yes, what we made, and both.

Q. You made machines with rollers, with rollers, with molds—

A. (Interrupting) Double, single, with none.

Q. The axial cutters, where were they located?

A. Axial cutter located in one roller.

Q. In one roller? A. Yes, sir.

Q. Is that the roller that has the molds in it?

A. No, sir. Q. It is a plain roller?

A. Yes.

Q. Where are the annular cutters?

A. Annular cutters—margins. Margin is on the rollers with the pocket.

Q. Roller with the—

A. (Interrupting)—Pocket, or the envelope, whatever you want [50] to call it.

Q. By "pocket," do you mean mold?

A. Yes.

Q. The depression in the mold?

A. Yes, sir.

Q. That was the machine that was sold to Marlo Company? A. Correct.

Q. Did you see that machine in operation?

A. Yes, sir.

Q. Did it have a weight in the hopper?

A. Never saw any. We never did put any. It isn't necessary any. Not even the machine Mr. Barili claimed patented has any.

(Testimony of Achille Bianchi.)

Q. Did you see any of the operators in the Marlo Packing use a 2x4 to push down?

A. I wasn't there when they did, if they did use it.

Q. You did not see that? A. No, sir.

Q. The lower ends of the hopper, were they cut to conform to the——

A. (Interrupting) Not necessary. They come down straight from the top to bottom, which the holes are very large size, by gravity. Will drop to the bottom without any counterweight or any block or any timber in it. And then you cut down to 45 degree. To the roller is no curve whatsoever.

Q. How do you keep the dough from going out the edges of the [51] hopper?

A. It can't go out, because the gravity of the dough is tight to the center of the hopper always. The hopper has guards to protect the dough to fly out the rollers.

Q. How do those guards go?

A. That is the hopper, itself, which you see them on the picture we have here for proof.

Q. Goes over the ends of rollers, does it? Does it go over the ends of the rollers?

A. It does, yes.

Q. You built and sold a machine to the Riviera Packing Company did you not? A. I did.

Q. Yes? A. Yes.

Q. When was that?

A. That was before the war. I tell you the truth, 1939 or 1940, something like that.

(Testimony of Achille Bianchi.)

Q. You don't know the exact date?

A. I don't know the exact time. I don't keep the exact time.

Q. Can you identify this ravioli machine as the one you built and sold to Riviera?

A. Well, I can identify up to a certain extent, but it is not clear enough. As far as I could see to it, it is my machine.

Q. On that machine, how were the rollers constructed on that? [52]

A. That, I won't know it, because we made rollers of all types. We had rollers with pocket margins on it; and we had rollers with pocket only, and margin on the other; and we had rollers with pocket and margin, so I don't know which one. That is too far back, and it is hard to remember.

Q. You built them in different ways?

A. Oh, yes, absolutely. Practically, I don't think I built two machines alike.

Q. Some of them, you had the cutters all on one roller?

A. Absolutely.

Q. And some you had annular cutters on one roller and longitudinal cutters on the other?

A. I won't say that. I won't know there if I have done anything like that. It might be. I can't recall it.

Q. Can you describe——

A. (Interrupting) I can't. If it was a year ago or six months ago, I would say yes or no, like I had the Marlo Packing machine in my shop to be cleaned out after the war.

(Testimony of Achille Bianchi.)

Mr. Trabucco: It seems to me this questioning should be directed to some certain time, rather than generally speaking. There were machines made prior to 1940 probably which might be considered to be within the scope of this patent, but the defendant has not had any connection with those machines since they were sold.

Q. (Mr. Franklin): Were they made after February 9, 1932? [53] That is the date of the patent in suit.

Mr. Trabucco: That is again objected to, your Honor.

The Court: Objection overruled.

Q. (Mr. Franklin): Can you answer that?

A. What?

Q. Did you make——

A. (Interrupting): I made some before and some after 1932.

Q. You made them in different ways after 1932?

A. All different most of the time. We always improve on it.

Q. You make some with the cutters spaced in different ways on the rollers?

A. Well, yes, every type. According to the size of the roller. The cutter doesn't mean anything.

Q. On this Riviera machine did you have any adjusting means for adjusting the hopper?

A. Absolutely not. Right in the machine, never did have any adjustment. I never attempted to put in any, in the first place, because it is foolish to manufacture such a thing in a mechanical point, because it doesn't require. If it work in one posi-

(Testimony of Achille Bianchi.)

tion, it should work right through in the same position without any adjustment. The adjustment is not required whatsoever.

Mr. Franklin: I think that will be all.

Cross-Examination

By Mr. Trabucco:

Q. Did I understand you to say that on this [54] Marlo machine which I believe is illustrated in these photographs, and which at this time I would like to introduce for the purpose of identification, that both cutters were——

A. (Interrupting) One roller.

Q. I believe you made a misstatement, if that is what your testimony is now. You said previously that they were on separate rollers.

A. No, I didn't say that. I said that it won't matter where you put it. It will work just the same.

Q. On this particular machine which is illustrated on these photographs, are the cutters on one or two rollers?

A. One roller, and the other roller has the margin and the pocket, or the envelope.

Q. Then your testimony is that the one roller has both the longitudinal and the circumferential cutters? A. Yes, sir.

Mr. Trabucco: That is all.

The Court: It may be marked for identification.

(The photographs referred to were marked Defendants' Exhibit B For Identification.)

(Testimony of Achille Bianchi.)

Redirect Examination

By Mr. Franklin:

Q. Who was this machine made for, Mr. Bianchi, this exhibit?

A. Machine made from Bianchi Machine Shop, made for myself.

Q. Do you make ravioli? [55]

A. No, I sell them.

Q. Whom did you sell that to?

A. Marlo Packing Corporation.

Q. The Marlo machine?

A. That's right, sir.

Q. On that machine, you say you have the annular cutters. Where are those?

A. I will show you. The annual cutters are this. You see, this line here is a step, put out about 1/16 iron, the surface or the O.D. of the roller, and this side is zigzag, cutters which form the square on the ravioli, and this are the pocket, which I call pocket, of the ravioli, and this are the margin in both on this, and all the cutters is on the roller, this—they care to form the ravioli, and this—they care to cut them in squares (indicating.)

Q. You have all the molds and pockets in one roller? A. Yes, sir.

Q. And no cutters on that roller?

A. No, sir.

Q. I understand you to say in some of the——

A. (Interrupting) I say I might have. I can't remember back twenty-five or thirty years ago.

Q. I don't want you to go back that far. Within

(Testimony of Achille Bianchi.)

the last six years, have you made any different from that?

A. Yes, I made some rollers with the pocket, the margin, and [56] the cutter all in one roller, which we have a patent. I made it for the lady Mr. Trabucco has.

Q. Did you ever make any with the annular cutters on one roller?

A. Not that I remember, which is not necessary.

Q. The axial cutters on the other roller?

A. I can't recall. It doesn't matter a bit. You can put them any way you want to.

Q. Did you ever do it that way?

A. I can't recall.

Mr. Trabucco: Specify the time, will you, please?

Q. (Mr. Franklin): Within the last six years.

A. In the last six years I didn't. I am pretty sure in the last six years I didn't make any machine, at all.

The Court: He stated he never made machines alike.

The Witness: And the last six years I didn't make any.

The Court: You didn't make any in the last six years?

The Witness: No.

Q. (Mr. Franklin): Did you make any since February 9, 1932 with longitudinal or axial cutters on the roller that has the molds in it?

A. I don't recall.

Mr. Trabucco: That is objected to as incompetent, irrelevant, and immaterial, and not proving any—

(Testimony of Achille Bianchi.)

The Witness: I don't recall back twenty years ago.

The Court: One moment. [57]

Mr. Trabucco. He speaks of 1932.

The Court: Counsel has made an objection. Are you directing his attention to any particular time?

Mr. Franklin: I said after, I think, February 9, is the date of the patent in suit, 1932.

The Court: Yes.

Mr. Franklin: If he had made any rollers with longitudinal cutters on the roller that had the pockets in them. That goes to the question of infringement.

The Witness: That is pretty hard to answer that, because I won't recall if I did.

Q. (Mr. Franklin): You don't recall?

A. No, sir, because I can only go back as far as any time specified that I could remember, and after that, I won't remember.

Q. Will you swear you did not make them that way? A. No, I won't.

Q. You won't swear to that. Will you swear you did not make rollers with longitudinal cutters on the roller that had the pockets in that machine for the Riviera Packing Company?

A. I won't swear to that, either.

Q. You won't swear you did not?

A. No. Why should I swear when I am not positive? I am not that kind.

Q. I don't ask you to swear to anything about which you are not positive, but you don't know, you won't swear one way or the [58] other?

A. I can't if I am not positive.

(Testimony of Achille Bianchi.)

Q. Do you know where any of the cutters were on that machine that you built for the Riviera Company?

A. It must be a cutter. Without the cutter, you won't have the separation of the ravioli.

Q. You had the cutters, but I am asking do you remember which rollers you had the cutters on?

A. That is another question. I can't remember.

Q. You can't remember?

A. No. It isn't an item I have before me day and night. It is something that I had before me ten years ago. I can't remember now.

Q. Do you remember that machine that was sold to the Superba Company?

A. No. That is still too far. 1929 I built the first machine for Superba. 1927 I started and I delivered it in 1929.

Q. Do you remember discussing the two rollers with Mr. Barili that were made for the Superba machine? Do you remember that?

A. I don't recall. Not Mr. Barili, never. Barili never talked to me whatsoever. It is all an imaginary story that I heard so far this morning.

The Court: What is imaginary? The supposed conversation you had with him?

The Witness: I didn't have no conversation.

The Court: Did you have any agreement with him where you said you would not make the machine? The Witness: No, sir.

The Court: You deny that?

The Witness: Yes, sir.

(Testimony of Achille Bianchi.)

Q. (Mr. Franklin): Was this Marlo machine sent back to your factory for repairs?

A. No, sir. It was sent back to be cleaned after five or six years. It was in the shop during the war. They didn't have no occasion to manufacture ravioli, and the machine got rusty. It was impossible to use it again, so they sent it back to me so I can do the proper cleaning.

Q. Were there some repairs made?

A. When you clean it, if you see something that wear out, you put a new part in it.

Q. Was there something wrong with the scrapers?

A. There was no such thing a scraper, never heard any scraper in the ravioli machine. The scraper only work in hand machine. You have to scrape the tip after you dirty it.

Q. Isn't there a scraper for scraping dough off the roller?

A. No scrapers. We don't use no scrapers. Don't need no scraper. Never heard of it.

Q. Do you remember the Superba machine, whether there was a scraper on that, nor not?

A. Which Superba? Going back 1929? I can't remember. [60]

Q. Don't you remember that small machine that was used in the Exposition?

A. Made in 1937, delivered in 1939, delivered to the Exposition of San Francisco—worked in the Exposition all the time in demonstration, just for demonstrating our ravioli, how it is made, to the people.

(Testimony of Achille Bianchi.)

Q. Do you remember how those cutters were on that?
A. No, I can't.

Q. You don't remember any scraper on that machine.
A. No, I can't.

Q. That small machine?
A. No.

Mr. Franklin: I think that is all.

Mr. Trabucco: That is all at this itme.

(Witness excused.)

Mr. Franklin: I would like to recall Mr. Barili for a detail.

ARTHUR E. BARILI

recalled for Plaintiff, previously sworn.

Direct Examination

By Mr. Franklin:

Q. Mr. Barili, how did you learn about the Superba machine?

A. I learned about that infringement from the Patent Office, United States Patent Office. I had the patent printed there [61] and once I was notified that my patent was allowed, but it might take twenty days before it was issued, due to the fact that you had to go through the examiner on account of possible interference, and the party that was interfering was Pietro Muzio. He was the president of the Superba Packing Company at the time, and he was the one with the machine. The machine was sold to them prior to the time Mr. Bianchi made them a machine. So that led me to believe that another machine was made. So I came to San Fran-

(Testimony of Arthur E. Barili.)

cisco, and I went down to Mr. Bianchi's shop, and all the parts here and there on the floor, all numbered with paint, evidently was trying to copy, but the machine was already built and was in operation at the Superba Packing Company at the time. So we came to an arrangement with Superba Packing Company. They gave me a certain sum to give them a license, and they gave me the machine back, and—in Los Angeles—the machine I built. I took one machine. I think it was \$500.

Mr. Franklin: That is all.

Cross-Examination

By Mr. Trabucco:

Q. You say that was before your patent was issued even?

A. The patent was allowed when I heard that.

Q. It had not been issued?

A. But it would have taken about twenty days before it was issued, as it had to go through the law examiner. [62]

Mr. Trabucco: That is all.

(Witness excused.)

Mr. Franklin: I think that is all. We rest.

Plaintiff rests

Mr. Trabucco: There is probably a basis for a nonsuit, especially against the Marlo Packing Corporation. There isn't any evidence whatsoever showing they have used an infringing device. However, I presume you would like to have——

The Court: I would like to hear the whole nature of your defense. You can reserve your motion.

Mr. Trabucco: At this time, your Honor, I would like to introduce in evidence a certified copy of the file wrapper and contents of the Arthur E. H. Barili patent No. 1,844,142.

The Court: May be marked as Defendants' Exhibit next in order.

(The document was received in evidence and marked Defendants' Exhibit C.)

Mr. Trabucco: I will next offer the D. M. Holmes patent No. 518,454, dated April 17, 1894, entitled, "Machine for Forming Articles of Pastry or Confectionery."

The Court: May be marked Defendants' Exhibit next in order.

(The document was received in evidence and marked Defendants' Exhibit D.)

Mr. Trabucco: I also offer in evidence a copy of letters patent, No. 1,094,321, granted April 21, 1914, to E. Evans, [63] this patent being offered for the purpose of showing annular cutters on one roller and axial or transverse cutters on the other roller, the two sets of cutters cooperating to cut the dough into squares.

The Court: Defendants' next in order. May be appropriately marked.

(The document was received in evidence and marked Defendants' Exhibit E.)

Mr. Trabucco: Next I offer in evidence the United States patent issued to R. Oleri, No. 1,479,925, entitled, "Cylindrical Ravioli Shaper, Sealer and cutter." This patent was a combined device for cutting ravioli and sealing their outer edges. The cutters are arranged circumferentially between the molds and also longitudinally, and these cutters cut the ravioli dough into the required shape.

The Court: Defendants' Exhibit next in order. May be marked.

(The document was received in evidence and marked Defendants' Exhibit F.)

Mr. Trabucco: Mr. Bianchi, will you take the stand?

ACHILLE BIANCHI

called as a witness on behalf of Defendants, having been previously sworn, testified as follows:

Direct Examination

By Mr. Trabucco:

Q. What do you manufacture, Mr. Bianchi?

A. Ravioli, macroni machinery, tamales; numerous machinery.

Q. How long have you been engaged in this business?

A. For myself from 1922.

Q. Are you familiar with most of the equipment commonly used in the commercial and household manufacture of ravioli?

A. Yes, sir.

(Testimony of Achille Bianchi.)

Q. I will show you a copy of the Oleri patent and ask you if you have ever seen this device before.

A. Yes, that is what they call family used device which will form the ravioli and cut it in the same operation, which I think I have made more than one roller for this person here—the patent years ago, maybe twenty years ago.

Q. 1924? A. More than that.

Q. I will show you a number of photographs marked Defendants' Exhibit B For Identification, and ask you if you can identify the machine that is illustrated on these photographs.

A. Yes, this machine is made by me. This machine is a ravioli machine seen side view which distinguished the hopper which is a straight hopper, high enough to contain enough filling so that the gravity will press in the pocket of the rollers without any substantial increase in the weight, or any other device.

Q. Was that a machine sold to the Marlo Packing Corporation?

A. Yes, sir, this is a machine made for Marlo Packing, the way [65] I can see it here.

Mr. Trabucco: I offer these photograph in evidence.

The Court: They may be received and appropriately marked as Defendants' next in order.

(The photographs previously marked Defendants' Exhibit B For Identification were thereupon received in evidence.)

(Testimony of Achille Bianchi.)

Q. (Mr. Trabucco): Referring to those, you will notice there are small numerals placed on the right-hand corners. Will you identify those various views that are shown on the various photographs?

A. You mean calling letter "A" as the side view. In this side view, you can see the two calibrating breaks—the two calibrating breakers which the dough come through.

The Court: Calibrated?

The Witness: Breaker. Which the dough come from this point, here, indicating they put a roll which is very thick, the dough, and this calibrate it down to the thickness.

The Court: You set the calibration in advance?

The Witness: In advance. Some might require ten thousand thickness, the dough, some maybe fifteen, and twelve, and so forth. Also, you can see the side of the hopper, which is a straight up-and-down with 45 degrees to the roller; and my name shown on the side of the machine—Bianchi Machine Shop, 221 Bay Street. Photograph B: You will see angle side of the machine, left angle, with part of the hopper [66] side and front of the hopper, part of it, with one complete calibrating break which consists of two rollers and part of the roller which has no pocket, but has a knife from run of the rollers to the length of the rollers, and also the motor which will drive the same machine, and belt that takes the product out of the machine.

Photograph C: You will see the hopper and the right-hand roller with pocket, but no knives in it.

(Testimony of Achille Bianchi.)

My name in the hopper. The hopper, the same as I explained it before, straight down to the rollers with 45 degrees to the center of the roller.

Photograph D will show also part of the roller, top and bottom, which hasn't got no pocket, but contain knife on the length of the roller and the run of the roller, which will cut squares of ravioli, and the hopper on the left-hand side, with my name on it, coming down straight up and down with 45 degrees to the center of the roller, resting stationary on a piece of angle.

Q. (Mr. Trabucco): Referring to photograph E, describe the construction and location of the rollers: A. You mean E, or B?

Q. E.

A. I didn't have no E. Oh, I am reaching for that now. In regard to photograph E, we will see clearly on top of the roller with two angle on each side of the roller, which will [67] hold the hopper stationary, no adjustment whatsoever with it. One roller contain only the pocket and the margin, so they will form the pockets of the ravioli and squeeze the dough together to form a solid margin between two sheets of dough.

Q. On that particular photograph, it is clearly shown, is it not, that one of the rollers has both sets of cutters on it. The other has no cutters whatsoever on it.

A. No, sir. And one roller has all the cutters and——

(Testimony of Achille Bianchi.)

Q. Are these rollers in contact with one another?

A. They could never be in contact, because if they are in contact, the ravioli would be all separated by one by one, which by gravity, they would never drop out of the pocket.

Q. Then it is necessary that these rollers be separated?

A. A few thousandths opening so it will mark it close enough so they will naturally break off in a point, but they are not cut right through. They couldn't be, otherwise each ravioli would remain in those pockets and you will have to take it out by hand.

Q. Referring to photograph B, will you describe the construction of the hopper?

A. B, you say?

Q. Or D.

A. The hopper consisting of square or rectangular box resting on top of the bearings of the machine, two piece angle—no adjustment.

Q. Is the hopper adjustable as to height? [68]

A. No, sir, the two angles screw on top of the bearings of the two rollers, and there is no such thing as any adjustment.

Q. Does the bottom of the hopper conform to the contour of the rollers?

A. No. Clearly seen and on all the machines I have ever made, no such thing as concave with the rollers, or going down 45 degrees, or near to that degree, to the center of the roller.

(Testimony of Achille Bianchi.)

Q. Those sides of the hopper are not straight as shown in the Barili patent?

A. No, they also go down to 45 degrees to the roller.

Q. On any of your machines have the rollers been made in sections or in one piece?

A. All one solid casting, and they are machine grooved for the work you want to do and the size required for the customer.

Q. Have any of your ravioli machines been equipped with weights inside the hopper?

A. Never, which it isn't necessary.

Q. Have any of your hoppers been adjustable?

A. Never. Never did so, because how can they adjust the hopper? The man that makes ravioli, he wouldn't know if you ask him to raise it or lower it, put it sideways or lengthways, you will have to give him the machine 100 percent perfect, which he will take care of you after that, perfect the machine properly.

Q. You have seen the drawings that accompany the plaintiff's [69] answers to defendants' interrogatories, have you not?

A. Yes, sir, I saw the print.

Q. Did you ever construct the machine that is illustrated on those drawings? A. No.

Q. That is not of your manufacture?

A. No similarity, whatsoever.

The Court: Point out the dissimilarity.

The Witness: The dissimilarity is this. The dissimilarity—

(Testimony of Achille Bianchi.)

The Court: Take the hopper, for instance.

The Witness: Is the hopper that is made concave with the rollers—

The Court: Not at a 45-degree angle?

The Witness: Is not straight 45, but concave to that, which it does not show any opening there. Mine has at least a three-inch opening which to fill in the rest like in the middle, in a free flow state, and this here, probably in this type, they might have to have some way to come through a small pocket there. Besides that, we have some kind of tool post on one side—I don't know if on both sides—which insure support of the hopper with bolts which looks like an adjustment for some kind.

Q. (Mr. Trabucco): Referred to in there as being adjustable? A. It might be. [70]

Q. For the purpose of adjusting the height of the hopper?

A. I never done such a thing like that, and, furthermore, we kept this roller here way back as far as possible to give the dough a chance to conform themselves, not to be coming out after the squeezing from the larger dough to the smaller dough, and interfering with the filling times. Then, it crystallizes a little bit, the dough, so it will be keeping more uniform after they form on the ravioli. Furthermore, this ravioli is coming out with a double packet which Riviera—Marlo Packing Corporation has only the pocket in one side, but this is shown with double pocket.

The Court: I understand.

(Testimony of Achille Bianchi.)

The Witness: And now the rollers they were close one to the other one, this shape, that the man made the drawing here which I think is Engineer Arturo Barili, this ravioli won't hang up one against the other, but will drop, because are caught, naturally, which will never work, and if they hang up, that means they are going to run against the roller and go around and around several times and make a mess out of it.

The Court: They look like sausages.

The Witness: That's right, sir. They are formed, but not cut completely through, so they come out and get in this conveyor, then, according to the speed of the conveyor will separate farther out, will put the next conveyor a little faster, and they all separate, and there is no place to separate it here, [71] because they will remain.

The Court: Are they sold in sheets finally?

The Witness: Semi sheets, square, that is, for family use, and for cannery, they will—for cannery, they separate it and put them in cans for canning. And this here, for selling fresh, they are sold in rectangular boxes which contain 72 or 75 ravioli to each box. They prefer to have them to keep their form and keep together, that they will be easy to pack in the box for selling purposes.

Q. (Mr. Trabucco): That machine is not shown on the drawings, is not similar to the one you see on the photographs?

A. No. The motor is the same which they manufacture there.

(Testimony of Achille Bianchi.)

Mr. Trabucco: I believe that is all. Just a minute.

Q. I will show you this pamphlet or sheet which is marked Defendants' Exhibit A For Identification, and ask you if you can identify it.

A. This form, or whatever you want to call it, I pick it up myself in my own country, where I born, Milan, Italy, after World War I, before I was discharged from the United States Army and took it to America.

Q. What year?

A. 1919, and took it to America, myself, in my personal possession.

Q. On that pamphlet are a number of ravioli machines.

A. One ravioli machine—different type of ravioli made in a [72] different name, square, rectangular, or triangular, or other stuff, but the ravioli, itself, is square—the only one square.

Q. When did you first have knowledge of machines of that type?

A. This is the first time I ever saw a machine of that type. Of course, we made machines by hand, or with rollers, one roller or two rollers, or wood rollers—more of family affair. No such thing as a big market. They have to do for lifting ravioli those days, and this is the first one.

Q. Various types of machines, are there not?

A. That's right.

The Court: Is this a hand machine?

The Witness: They are all on motor—motorized.

The Court: This has a belt?

(Testimony of Achille Bianchi.)

The Witness: Yes.

The Court: Runs off a belt?

The Witness: Yes.

Q. (Mr. Trabucco): I will show you another patent which was issued in 1917 to Tommasini.

I will ask that this be marked.

(The document was marked Defendants' Exhibit G For Identification.)

The Court: I notice on this machine on the circular you received in Italy, it has a press at the top. Is that to force the [73]—

The Witness (Interrupting): That's right.

The Court: You work on gravity?

The Witness: I am working on gravity. Mine is 12 inches by 24 inches long. This is only a question of six inches wide and six inches long. The gravity is not enough.

Q. (Mr. Trabucco): We have in this Tommasini patent another type of automatic ravioli machine, showing two rollers and cutters on each roller.

A. That's right. This is another ravioli made in a different form, like half-moon, for instance. It isn't a square one, but is the same principle.

The Court: The record may not reflect this: What is the depth of the so-called pockets?

The Witness: The depth of the pockets consists on the order of the customer. If a customer wants to put, say, 50 ravioli in a can, another customer wants to put 60—

(Testimony of Achille Bianchi.)

The Court: You have different type rollers?

The Witness: Different types. You have to give him the capacity or size of ravioli, so there will be so many going in the can, according to the size of the can.

Mr. Trabucco: That is all.

Cross-Examination

By Mr. Franklin:

Q. On this Exhibit A For Identification you say all of those are ravioli machines?

A. No. [74]

The Court: Only one.

The Witness: Only the ravioli we are talking about. The only one I could see is this one, here (pointing), the one with the cross on it.

Q. (Mr. Franklin): Entitled, "Raviolara"?

The Court: They all have relationship to paste products, macaroni?

The Witness: Yes, the same thing I put out, myself.

Q. (Mr. Franklin): Regarding the position of the cutters, it is immaterial whether you have them all on one roller, or the annular cutters on one roller and the longitudinal cutters on the other roller, is that right?

A. Is immaterial in which you mean? As means of working conditions?

Q. Yes, for cutting them into squares.

A. It is immaterial, yes, sir.

(Testimony of Achille Bianchi.)

Q. You can put them all on one roller or you can put circular cutters on one, straight cutters on the other? A. Correct.

Q. And they will cut it into squares and they will perform the same function?

A. That is the last operation. The form is already done. The cutting is the last operation.

Q. And they will cut no matter which way you make them?

A. We make most of the ravioli machines without cutters whatsoever. We make them just to form it and out they go in another [75] department—takes care of the cutting of the ravioli. That is the large capacity ravioli maker—they won't use the cutters whatsoever on the ravioli machine. They go out of the department completely, through the conveyor system.

Q. That is another system. A. Yes.

Q. So far as these particular machines are concerned, you do have circular or annular cutters and straight cutters, axial cutters, and longitudinal?

A. You have to have mobile—stationary—you have to have some kind of cutter.

Q. They will operate no matter which way you put them on the rollers, whether you put them all on one roller?

A. Yes, sir, it don't make any difference.

Q. The only difference between yours and your rollers and Barili's rollers in this patent is you put all the cutters on one roller?

A. Yes.

(Testimony of Achille Bianchi.)

Q. That is the circular cutters?

A. Sometime we don't put none at all on any roller. We use outside cutters.

Q. If you are doing your cutting outside?

A. Yes.

Q. The only difference then is the transportation of the axial cutters over onto the other roller that has the annular cutters [76] on it, the difference between yours and Barili's?

A. I don't know what Barili has.

Q. You have never seen Mr. Barili's?

A. I don't think so.

Q. Can you read drawings?

A. Yes, sir.

Q. Can you read this drawing?

Mr. Trabucco: Let him understand the question when he gets through with that.

The Witness: That drawing, he has some lining in the long ways of the roller and lining in the runway of the roller, the diameter of the roller, but he also has section of the rollers.

Q. (Mr. Franklin): We are not going into that. I am just going into the cutters.

A. This is not a cutter completely, because the roller does not come close enough to cutter. You see, they come down in the form of a chain. If they were cut in, they would drop more like a drop forge.

Q. I am speaking of the roller here, you see the axial cutters? Are those axial cutters there?

A. Yes.

(Testimony of Achille Bianchi.)

Q. Are those annular cutters, there?

A. That's right.

Q. Which are numbered annular cutters 13, 14, and axial cutters—[77]

A. (Interrupting) 16 and 15.

Q. 16 and 15. All right.

The Court: We will take a short recess.

(Recess.)

Q. (Mr. Franklin): Can you state just how the hopper is held on in position there, Mr. Bianchi?

A. By two pieces of angle steel resting on top of the two bearings of the rollers, and the hopper rest on top of the angle.

Q. Just rests on it?

A. Just rests on it.

Q. And you can lift it off?

A. When you wash it, you will have to take it off to clean it.

Q. You have the angle plates upstanding from the frame?

A. No, they are screwed on top of the bearings.

Q. They are secured? A. Yes, sir.

Q. On the bearings on the frame?

A. Yes, sir.

Q. Stationary, and the hopper—

A. (Interrupting) Rests inside the angle.

Q. On the upper edge?

A. It doesn't meet the upper or bottom edge.

Q. Rests on those plates? A. Yes.

Q. And just rests there? [78]

A. That's right.

(Testimony of Achille Bianchi.)

Q. And you can lift it off when you want to clean it out? A. That's right.

Q. The hopper is detachable?

A. Oh, yes, it has to be removed for washing it, cleaning.

Mr. Franklin: That will be all.

Mr. Trabucco: Defendants rest, your Honor.

The Court: Step down.

Defendants Rest.

Mr. Franklin: I think that a motion for judgment for the plaintiff is in order, and the prior art that is shown here we contend does not anticipate the patent, because there is really no prior patent that shows an automatic ravioli making machine, according to Mr. Barili's testimony. This machine, here, that is set up in this publication was a machine that was made after a machine that he had. Anyway, that wasn't set up in the answer for invalidating the patent, and can't be taken as evidence.

The Court: Reference is made to Holmes, Evans, and also Oleri.

Mr. Franklin: Yes.

The Court: Let's take up first the alleged infringement on the part of the defendant before we discuss the prior art.

Mr. Franklin: Yes. Well, the testimony of the defendant [79] Bianchi shows that they made a machine with rollers that had pockets and that had knives, or cutters, and he has testified that he has made them both ways, he has made them with cut-

ters on one roller alone, and pockets in the other roller alone, and some with rollers with cutters, part of the cutters on the roller that has pockets and other cutters on the roller that hasn't the pockets. Well, it seems that that is broad enough to come within the scope of this patent, here, and he has testified that it is immaterial how you dispose those cutters, whether you have them all on one roller or part on one roller and part on the other, or annular cutters on one roller and axial cutters on the other, like Mr. Barili has them here. So the question of where you put these cutters is not material.

The Court: Isn't that a matter of mechanical—

Mr. Franklin: Equivalency?

The Court: Yes. Proceed.

Mr. Franklin: So there is a very elementary rule of patent law that transposition of parts or reversibility of parts does not avoid infringement.

Now, with this Marlo machine, we have the one roller with the pockets in it, and no cutter on it. The other with both cutters, both axial cutters and annular cutters. The only difference there between the patent in suit is that all he has done, he has taken the axial cutters of this roller and put them on the other roller, just transposition [80] of those cutters. That has not changed the operation of the machine. It has not accomplished any new or different result. It performs the same function in substantially the same manner, and accomplishes the same result. There is identity of means, func-

tion and result. It is a clear case of infringement. That is all we have to prove.

And so I think that that is about all we have to say on the question of infringement, particularly as to this claim 4.

Now, the attorneys for Superba Company recognized that Mr. James Naylor, one of our leading patent lawyers in San Francisco, and I might say on the Pacific Coast, recognized that and made an offer of judgment. So it seems to me this question of infringement is very clear.

The Court: Wasn't there a license agreement involved in that Superba matter?

Mr. Franklin: There was a license on that early machine in 1932, and then the small machine came out later which was practically a duplicate of it, and that was admitted in their pleadings—said it was a miniature machine. And that is the machine from which the drawings were made which Mr. Barili, from his interrogatories, and from the information he got over the telephone from Mr. Gierth—

The Court: May I have the original letters patent? I want to follow you as you proceed. [81]

Mr. Franklin: Yes, this is my copy. I think there is one the court has.

The Court: 1 in evidence.

Mr. Franklin: Take that Claim 4.

“In a ravioli machine, a pair of inter-gearred rollers, one roller having indented molds and provided with axial cutters between said molds,

the other roller being made with annual peripheral cutters adapted to be positioned between the molds of the first-named roller at the point of contact of the rollers, all the molds being spaced apart so as to provide a wide margin between the cutters and the molds, means for feeding sheets of flour paste to the rollers, and a detachable open bottom hopper for guiding stuffing to the paste sheets on the rollers.”

Exception was taken to the question of point of contact of the rollers. That is a statement that should not be taken literally, that they actually contacted. It means that the point where the rollers come closest together. That is the only way to read that, because certainly the machine would be inoperative if they were in actual contact. That must be construed to be within such contact, within such nearness of contact, as to permit the ravioli to go through the rollers. Certainly, that isn't the intention of the patent, and the patent should not be given such a literal construction as that, because Fig. 4 shows that there is a slight space between the two rollers, as measured by the depth of the knives, and that small space permits the ravioli to go through. That is also shown in Fig. 8, showing the ravioli to go through. Of course, the claims have to be construed in accordance with the specification and the drawing. That is a very poor expression there, and could have been improved upon, but still that claim should not be held literally to a statement which obviously means that the rollers

come at the closest point there together, that the cutters are adapted to the position between the molds of the first-named roller at the point of contact of the rollers.

The Court: What would be your interpretation of point of contact?

Mr. Franklin: Point of contact would be at the nearest point at which the rollers came together. It would be the cutters do contact. We might say when you speak of the roller and the cutter being part of the roller, it is a point of contact, because the annular cutters, 12-B, 12, 13, do come practically in contact.

The Court: On this diagram, they are shown in contact, aren't they?

Mr. Trabucco: The rollers, themselves, are not in contact. The cutters contact the rollers.

Mr. Franklin: Yes, they contact to cut the ravioli into squares, and there is a little space, but there is a point where [83] these rollers come nearest together, and that is what was meant, at their nearest point where they are closest together.

So, the Marlo machine has all the elements of that claim. There is nothing more than a transposition of parts. Of course, it says that the "detachable open-bottom hopper." Well, there was some question about detachable, but Mr. Bianchi has just testified that the hopper rested on a stationary part, and you could just lift it right off. If that isn't detachable, I don't know what detachable means.

As for the weight, claim 3 specifies a weight. Well, of course, they may not use a weight, but

there has been testimony, I think, here by Mr. Barili to the effect that he was informed that they used a 2x4 to force the filling down if it doesn't feed fast enough, and that using a 2x4 or anything to push it down would be the equivalent of a weight.

So I think at least claim 4 and claim 3 are infringed. They deny they made them in sections and they deny that the lower end of the hopper conforms to the rollers, service of the rollers, but at least there is claim 3 and claim 4 in which there appears to be no question about infringement there. All the defendant has done, he has taken these axial rollers off of the axial cutters, of the roller that has the molds in it, and put them on the other roller with the annular cutters. All he has done is transposed one part, and it is very elementary in the patent law that transposition of parts does not [84] avoid infringement.

I can cite a number of authorities on that question which I do not have now, and I would like to have an opportunity to prepare a brief of authorities.

On the question of anticipation here, this Holmes patent, as I understand it, it makes stuffed macaroni, tubular pastry articles like macaroni, and they are stuffed with material, and there is no means in that patent for cutting ravioli into squares and for filling the ravioli, and for closing down the edges around the ravioli to hold the ravioli in the pocket.

This Oleri patent, I would say, that it isn't an automatic machine and Mrs. Oleri sued Mr. Barili on that patent, and I represented Mr. Barili, and

that case was dismissed—no infringement. There is an old rule in patent law. I don't know whether I can quote it or not. "That which infringes if later, and if earlier anticipates"—Well, I would say that which does not infringe—I can't apply it there, I am sorry. There is a rule to that effect, but if it doesn't anticipate—Anyway, that case, that suit was dismissed, and it isn't an automatic machine. It doesn't have any means for feeding the dough in between rollers and for cutting them automatically.

This Evans machine is a machine for manufacturing of feeding cake. It has a number of cutters there on it, but those rollers on that are not constructed in such a way as to [85] bring the ravioli down to the edges to form a flange at the edges where it closes in and leaves a pocket to hold the ravioli in.

That Holmes patent does not show that feature. The mold is different, altogether. That is the Evans patent. The Holmes patent, that is a stuffed macaroni patent. And those do not show it or anticipate the patent in suit, and neither does this publication here which Mr. Barili has given in his testimony, that that was subsequent to his machine, and he is not contradicted by anyone here. And, of course, this publication that I understand was picked up after the first World War, but it looks pretty fresh to me for a publication that is that old. Anyway, that publication was not set up as an anticipation, and to invalidate the patent in suit, so I think that the patent is clearly valid, in view of what art has

been set up, and is clearly infringed by having the identical elements with only one transposition of one element, and the claim 4 and claim 3, if they use a 2x4 to push down the material.

The Court: What about the case of the Exhibit Supply Company vs. the Ace Products, a recent Supreme Court decision, to which reference was made by counsel? Are you familiar with that case;

Mr. Trabucco: That is particularly in point in connection with this claim No. 4. [86]

The Court: No. 4, that is what I have in mind. After all, No. 4 is the basic.

Mr. Trabucco: That is the only claim there would be any question about in this. There is no weight used. The hopper is not adjustable.

The Court: No. To what extent, Mr. Franklin, do you regard the segmented roller as distinguished from the one piece, that is, the rollers in parts as distinguished from one casting?

Mr. Franklin: Well, of course, that probably is a good way to make it. and they say they don't make it that way. It is immaterial.

The Court: Aren't you bound in the strictest sense under No. 4 under the authorities applicable?

Mr. Franklin: I would say not. Of course, the patent is not limited to a particular way of that showing. That is only way that roller could be made. The roller could be made in numerous different way and claim 4 does not limit the roller to any particular way in which it is made. You are not limited in the claim except where there is some

specific statement it must be made that way. Claim 1 brings that out, I think, one of these claims:

“A plurality of cylindrical sections and circular knives of a larger diameter between said sections; in combination with—”

Claim 1 would not be infringed unless it were shown that [87] the defendant made the rollers in cylindrical sections, which they say they do not, and that may be true. Of course, from those photographs—

The Court: Claim 1?

Mr. Franklin: Claim 1, yes. And that claim is limited to rollers made in sections by claim 4.

The Court: Claim 1 reads:

“In a ravioli machine, a cutting roller comprising, a plurality of cylindrical sections and circular knives of a larger diameter between said sections; in combination with a second roller comprising, a series of cylindrical sections having convex annular beveled edges and a series of cylindrical disks fitting between said sections, the periphery of said disks having transverse grooves the edges of which are beveled—”

Proceed.

Mr. Franklin: I will not maintain infringement of claim 1 for that reason, but I do maintain that claim 4—

The Court: Do you abandon all of the other contentions?

Mr. Franklin: Except as to 3 and 4. There has been some testimony that a 2x4 was used to push down the ravioli material, and if that were done that is equivalent to a weight. A weight and a spring are mechanical equivalents——

The Court: Doesn't the defendant in the case at bar claim gravity as sufficient weight to bring the material into positions? [88] Wasn't that the testimony of Bianchi?

Mr. Franklin: What is that?

The Court: With respect to No. 3, we have narrowed this down to claims 3 and 4. I recall Mr. Bianchi's testimony, one of the defendants in the case at bar, to the extent he testified and relied, at least the machine relied on the force of gravity to bring the material, the content of the ravioli, into position.

Mr. Trabucco: That is correct. The testimony is that no weights of any kind or other extraneous means were used in the hopper.

Mr. Franklin: That is what he testified. He didn't know they were. But there is no one here from the Marlo Company that operated those machines to tell——

The Court: In No. 3, at the conclusion of the claim:

“An open bottom hopper above the rollers for guiding stuffing to the paste sheets on the rollers, and a weight insertable in and loosely fitting said hopper for pressing the stuffing against the paste sheets.”

Mr. Franklin: That is shown in Fig. 1 of the patent drawing.

Mr. Trabucco: I shouldn't think counsel would contend that would be patentable anyway.

The Court: You gentlemen, I assume, spend most of your waking hours in patent matters. I assume you, too, Mr. Franklin. [89]

Mr. Franklin: Yes.

The Court: And it would seem to me as if that might be a rather ridiculous contention.

Mr. Franklin: Of course, the claim was allowed, and evidently gravity alone will not force it down sufficiently at times. I can conceive where that would be. Of course, sometimes this filling maybe of a different consistency. It may be thick, it may be thin. When it is too thick, you would have to have something to force it down to make it operate to the best advantage, and that is the information that Mr. Barili had.

The Court: I think basically the claim under 4 is the crux of this whole problem, isn't that true? I regard claim No. 4 as the very crux of this case, if there be any problem at all.

Mr. Trabucco: I would say so, too, but I don't think there is any question as to claim 4.

The Court: It is virtually narrowed to that.

Mr. Trabucco: Yes.

Mr. Franklin: Yes. That is the claim on which the Superba judgment was offered on that, and that is also the claim on which infringement was admitted by the Riviera Packing Company, so there have been some pretty good lawyers that have

gone over this patent, and there seems to have been unanimity among those [90] from which we have brought suit before that claim 4 was infringed by the machines that were used in manufacturing ravioli, and they were both Bianchi machines—the Riviera Company and the Superba Company.

I think we made out a clear case of validity of the patent and infringement. I think the judgment should be rendered in favor of the plaintiff, and if the court wants some authorities as to the question of transposition of parts and the equivalency and infringement, and things of that kind, I would be very glad to furnish them.

Mr. Trabucco: Of course, this patent is susceptible only of a very narrow construction, particularly in view of the rather difficult time the patentee had in the Patent Office.

The Court: Six years.

Mr. Trabucco: Not quite six years, but over five. And the continuous correspondence back and forth between the applicant's attorney and the Patent Office indicates he had a very difficult time in securing the allowance of any claims, and, as a matter of fact, I think counsel for the plaintiff has lost the gist of this whole thing, and why the patent was finally allowed, and that was because wide marginal spacing was between the cutters and the molds which the defendant contended, or the applicant contended sealed the ravioli at the outer edge. And that, I believe, is the reason why, for instance, claim 3 was allowed, because the claim specified [91] that there was a wide margin between the mold and the

cutter, and this margin sealed the paste together, the two sheets of paste together, so that the interior part of the ravioli could not escape. It stands to reason that the Patent Office would never have allowed a claim on the basis of a weight that was inserted in a hopper, because that is too obvious, anybody could think of that, a child could. That reason for the allowance of that claim was because of that particular provision in that claim, and that is one reason why I offered in evidence this Oleri patent to show the wide margins between the cutters and the molds, which sealed automatically and cut the ravioli material to prevent the interior part of the ravioli from escaping.

In this particular case, your Honor, the court must be controlled, that is, the decision of the court is controlled by the proceedings in the Patent Office, and by the authorities which interpret patents, and also in view of the prior art. The patent is quite limited in scope and in considering the entire question it appears quite obvious that the plaintiff has not made out a prima facie case. Of course, the evidence is more or less confined to the machine used by the Marlo Packing Corporation, and shown on these photographs. That is the only evidence we have that there might possibly have been some infringement.

The Court: Of course, the plaintiff's case was predicated [92] upon fleeting conversations he had with Gierth.

Mr. Trabucco: Yes, which, of course, were rather vague and certainly nothing definite came out of

that conversation to predicate a charge of infringement. Would you care to have me discuss all the claims, or claim 4?

The Court: I think counsel has virtually if not by expression by necessary implication, limited the contention now to claim 4.

Mr. Franklin: Claim 4 is the——

The Court: That is my understanding of the problem.

Mr. Franklin: Yes.

The Court: I would like a discussion on that, Mr. Trabucco.

Mr. Trabucco: All right. If the Court will take these photographs and follow me, I will be glad to read what I have here.

The Court: Mr. Trabucco, did you provide opposing counsel with a copy of the memorandum you submitted to me?

Mr. Trabucco: No, I haven't, your Honor. I have an extra copy which I will be glad to turn over to him.

Claim 4 reads as follows:

“In a ravioli machine, a pair of inter-gearred rollers, one roller having indented molds and provided with axial cutters between the said molds, the other roller being made with annular peripheral cutters adapted to be positioned between the molds of the first-named roller.”

In that particular phrase we have the location of two rollers with one roller having indented molds and axial cutters, and the other roller having annu-

lar peripheral rollers and these cutters are adapted to the position between the molds of the first named roller at the point of contact of the rollers.

“all the molds being spaced apart so as to provide a wide margin between the cutters and the molds, means for feeding sheets of flour paste to the rollers, and a detachable open-bottom hopper for guiding stuffing to the paste sheets on the rollers.”

This claim is limited to a combination, including a roller having axial cutters and a second roller having annular cutters. The claim is further limited to a structure wherein the rollers are in contact with one another.

In the machine manufactured by defendant Bianchi and sold to defendant Marlo Packing Company, and shown on these photographs, the axial and annular cutters are both on one cylinder, the other cylinder having only the molds thereon. In the machines manufactured by Bianchi the rollers do not contact with one another. There is no infringement of this claim since the accused machines do not embody the structures set forth and described therein.

In determining the question of infringement, it is well to keep in mind the well-recognized doctrine stated as follows in *DeCew vs. Union Bag & Paper Corporation*, 57 Fed. Supp., 388, at page 395: [94]

“The claims, as the measure of the invention, not only define the limits of the patent monopoly, but also determine the scope of the

art, and these boundaries, established by the patentee, may be neither extended nor shortened to meet the exigency of a particular situation." In *White vs. Dunbar*, 119 U. S. 51, the court stated:

"Some persons seem to suppose that a claim in a patent is like a nose of wax which may be turned and twisted in any direction by merely referring to the specification, so as to make it include something more than, or sometimes different from what its words express. The claim is a statutory requirement, prescribed for the very purpose of making the patentee define precisely what his invention is; and it is unjust to the public as well as an invasion of the law to construe it in a manner different from the plain import of its terms."

And in the same general effect, the case of *Flowers vs. Austin-Western Co.*, 149 Fed. (2d) 955, the court states:

"Thus it is clear that each of the patents is one of improvement on a combination of elements in prior use. In such a field the claims are not entitled to a broad and liberal construction, but on the contrary, the range of equivalents includes nothing not substantially identical with the means described in the patents, and the use of other known means, although equivalent in function will be excluded."

And particularly applicable here is the rule as to claim interpretation set forth in *Royer vs. Coupe*, 146 United States Supreme Court Reports 524:

“The principle thus laid down is, that where a patentee on the rejection of his application inserts in his specification, in consequence, limitations and restrictions for the purpose of obtaining his patent he cannot, after he has obtained it, claim that it shall be construed as it would have been construed if such limitations and restrictions were not contained in it.”

Also pertinent here is a ruling in *McClain vs. Ortmyer*, 141 U. S. Supreme court Reports—

The Court: I have read that.

Mr. Trabucco: There is still another compelling reason why claim 4 must be held to be not infringed. An examination of the file history of the Barili patent, page 40, discloses that claim 29 was added after the patent application was filed. This claim specified that one of the rollers had molds with axial cutters between, and that the other roller had annular peripheral cutters positioned between the molds. The examiner rejected the claim on the ground that it was vague—page 41 of the file history. The applicant Barili then canceled claim 29 and substituted claim 31—file history, page 42, following which the examiner again rejected the substituted claim and required that the limitation at the point of contact [96] of the rollers be inserted before it could be allowed. The applicant then amended the claim by inserting the required limitation.

Now, under the well recognized principles in patent law, an applicant by inserting limitations in a claim in order to secure its allowance, cannot later in a suit for infringement ignore these limitations and contend that an accused structure not having the limitations, infringes. The recent United States Supreme Court case of the Exhibit Supply Co. vs. Ace Patents Corporation, 315 U. S. Reports, 126, at page 136, is directly in point here. The facts are quite similar to those of the present case, and the legal principle involved is applicable here. The applicant, in the Ace Patents case, by amendment during the prosecution of the patent application, limited claim 4 in order to secure its allowance by inserting certain limitations as to the location of certain elements of the combination sought to be patented.

The Supreme Court, in its decision, stated as follows:

“Had claim 7 been allowed in its original form it would have read upon all of the accused devices since all of the conductor means complementary to the coil spring are ‘carried by the table.’ By striking that phrase from the claim and substituting for it ‘imbedded in the table’ the applicant restricted his claim to those combinations in which the conductor means, though carried [97] on the table, is also imbedded in it. By the amendment he recognized and emphasized the difference between the two phrases and proclaimed his abandonment of all

that is embraced in that difference. The difference which he thus disclaimed must be regarded as material, and since the amendment operates as a disclaimer of that difference, it must be strictly construed against him. As the question is one of construction of the claim it is immaterial whether the examiner was right or wrong in rejecting the claim as filed. It follows that what the patentee, by strict construction of the claim, has disclaimed—conductors which are carried by the table but not imbedded in it—cannot now be regained by recourse to the doctrine of equivalents which at most operate, by liberal construction, to secure to the inventor the full benefits, not disclaimed, of the claims allowed.”

By applying the principles set forth in the *Ace Patents* case to the case at bar, it will be readily seen that Barili, in amending claim 31, now claim 4, through the insertion of the words, “at the point of contact of the rollers,” abandoned any exclusive right to a combination employing rollers which were not in contact. In other words, anyone has the right to use forming and cutting rollers which are not in contact with one another. Defendants have never manufactured or used a machine in which the rollers were in contact. On the contrary, [98] the rollers are appreciably separated in defendants’ accused devices. Claim 4 is not infringed.

And further, of course, it is obvious that the defendants’ device does not come within the scope

of claim 4 since it hasn't got the two rollers, one having the peripheral cutters and the other the axial cutters. It comes without the terms of that particular claim and, of course, the patent is only susceptible of a narrow construction. You can't say that the doctrine of equivalents can be applied in this case, because it can't. The patent is susceptible to only a narrow construction. The prior art anticipates, as a matter of fact, the claims of this patent, and so far as equivalency is concerned, it cannot be applied here, at all. The plaintiff must at best rest on just exactly what this claim says, and that is all. He can't broaden it in any regard.

On the question of invalidity of the patent, I have some remarks to be made there.

The Court: You direct attention to another phase?

Mr. Trabucco: Yes.

The Court: What is that?

Mr. Trabucco: That is on the question of validity of the patent. I don't believe the patent is valid for one thing. Whatever slight improvements were made by Barili over the prior art are insignificant. For instance, the weight is one. The adjustable feature of the hopper is shown in Holmes. [99] The Holmes patent shows two rollers which are forming and cutting rollers, and operate in the same manner as Barili's two rollers. One is equipped with what might be termed the cutter and the other is plain, so that one roller cuts the sheets of paste which are stuffed with stuffing material and seals them automatically.

The Court: Is that a macaroni machine?

Mr. Trabucco: It is an analogous art. It isn't a ravioli machine, but it doesn't have to be a ravioli machine to anticipate. It is an analogous art. I would like to go over this patent with you, your Honor, if you care to.

The Court: You may.

Mr. Trabucco: You might follow my copy.

The Court: By the way, Mr. Franklin, have you the record before you made reference to by Mr. Trabucco in connection with the examiner's findings in the file history? Have you the file history?

Mr. Franklin: I don't have it.

The Court: You are thoroughly familiar with it, I assume, naturally having tried some of these cases.

Mr. Franklin: Yes.

The Court: This is the Holmes patent?

Mr. Trabucco: Yes. I would like to have the Evans patent, too. It will be noted in this Evans patent that there are two rollers, one which has annular cutters. This [100] is an enlarged section of that, of those two rollers. This is one of them, and this is the other. This roller has the annular cutters which are shown here, too. They extend clear around this roller, and the other has axial cutters, a number of cutters, which is set between these annular cutters. These are the transverse cutters. This is looking at it from the end and this is looking at it right down on top of the drums, so that when these two drums rotate as shown here, the paste is held in position on top of the roller by means of these two plates on the ends of the drums

which contain the paste and which act as a hopper. Then the paste is fed between the two rollers and automatically cut into squares by these two sets of cutters, one set being transversely arranged and the other set extending around the periphery of the other drum.

The Holmes patent, No. 518,454, discloses in Fig. 1 two pairs of rollers, *d, d*, which act to feed the paste or dough forward and also to form the dough into sheets of desired thickness. Page 1, lines 5 to 6 of the Holmes patent. Then we have roller, *e, e*, for forming and uniting the sheets of dough, and these two rollers correspond to Barili's two rollers, which also form and cut the sheets. The patentee Holmes' description of the operation as forming and uniting rollers. He calls them forming and uniting, because they form the material and also unite it by pressing the two sheets [101] of material between which the stuffing is inserted, presses them together, and unites them. So the two sheets of semi-forms of paste are carried forward each toward each other upon the roller *e* and at the point where the two rollers *e* come in contact with each other the edges of the semi-tubes or forms are brought into adhesive contact with the edges of opposite semi-forms, and these edges unite and thus complete tubes are formed. Holmes specifies in his patent that that action takes place. That is precisely what Barili does in his machine. He has two rollers which operate in opposite directions the same as Holmes does, and he cuts his material into certain forms and unites the sheets of paste together

to form a seal for the enclosure of the stuffing material. In that respect, there is really no difference whatsoever between the Barili device and the device shown in the Holmes patent.

The hopper or filling device is shown on Holmes, that is shown by the letter i. It is possible to feed the stuffing material between the paste sheets as they pass over the rollers e, e. This hopper or reservoir, as the patentee calls it, is adjustable. He specifies specifically it is adjustable—page 2, line 73 to 94. It describes the adjustability of the hopper. And the cutters on the rollers, as stated, function to form the material into longitudinal tubes or enclosures for the stuffing material. Even the feature of [102] cutting these longitudinal members into sections is provided and shown in Holmes' patent in Fig. 11. One of those rollers has cross members on it which, when rotated, automatically cut those filled confections into certain lengths. In this respect, Fig. 11 shows that construction and lines 102 to 114 describe their operation—page 3, lines 102 to 114. The annular ridges on the rollers e, e, cut the joined sheets longitudinally and the projections X (See Fig. 11, Holmes patent and description on page 3, lines 102-114), "cut them transversely." So there really isn't all of the elements of this Barili sheet fully shown in the prior art. Whatever minor changes that were made by Barili certainly don't come in beyond the scope of one skilled in the art. They don't amount to invention, and I believe in the discussion I have given the court, which I will elaborate on with additional authorities

if the court sees fit to accept them, I believe it is clear that whatever changes Barili has made do not constitute invention, and even if it is considered it is invention, as far as claim 4 is concerned, certainly there is no infringement, since the defendants' machine has its cutters all on one cylinder, and the rollers don't contact.

The Court: Counsel argues on the theory of mechanical equivalent, is that true?

Mr. Trabucco: That is what he contends, but, of course, in a matter of this kind, where a patent is only susceptible [103] of a very narrow construction in view of the prior art—

The Court: Particularly in view of limitations imposed by the examiner.

Mr. Trabucco: Yes, your Honor.

The Court: Counsel?

Mr. Franklin: The statement, you know, that this is a very narrow patent, that isn't correct.

The Court: Mr. Trabucco, pardon me. Before you advance into your argument, or your reply, counsel, although this may be immaterial, nevertheless Mr. Franklin has made reference to the *Superba Packing* litigation. The attitude adopted by counsel with respect to the matter, I do not know whether it requires a response for the record or the court. Have you any response to make to the attitude adopted by *Superba* in connection with this litigation?

Mr. Trabucco: Well, of course, the settlement was entirely favorable to *Superba*. That made the proposition in order not to incur further expense

that if Barili could take judgment against them, but he would have to pay costs. Apparently they had entered into a contract with Barili in 1932 and had paid for this machine already, so he couldn't have proved any infringement as far as they were concerned, and so they got off the hook, you might say, by he having to pay the costs that they had incurred.

The Court: There was a license and agreement entered into. [104] Reference is made to it in the pleadings.

Mr. Franklin: There was a license agreement made with Superba that they could use that one machine, and one machine only, but they built the second machine that was used over at the Exposition. And in that respect, Bianchi didn't keep his agreement; and, of course, against the Superba, we realize that we couldn't expect to collect much damages out of a small machine like that, that had very little use. Our only reason for joining with Superba was to take that little machine out of circulation. There would have been a profit made on it and Superba was negotiating with another concern to sell that machine. On the question of paying costs, we didn't pay the costs. Superba paid the costs. That statement is incorrect.

Mr. Trabucco: I disagree with him, your Honor.

Mr. Franklin: We collected something like \$25 and we got an injunction against the Superba. That machine was taken out of circulation, and Mr. James Naylor represented the Superba people in that case, and he is a very able patent lawyer of

San Francisco, and one of the best, I think. Now, saying that this Barili machine is nothing but a narrow machine, that isn't true. It is really a pioneer invention. It is the first practical and successful automatic machine for making ravioli and there is no other on the market. The only thing we have are those made by Bianchi, and they are [105] copies, with just slight changes. All that Bianchi has done, he has taken the axial cutters off of one roller and put them on the other roller, transposed just one part, and transposition of parts doesn't avoid infringement. I would like to cite authorities on that. I have plenty of authorities to cite on that point.

As for the wide margin which is specified, there has to be a relatively wide margin. We haven't specified a particular dimension, but that margin must be wide enough around the filling so that it will not come apart. Now, there has to be a substantial margin around the edges, around all four edges of the ravioli to hold it in, to seal it effectively. That is the way all ravioli are made. You can notice all ravioli are made that way. They have to be.

The Court: What is the answer to the argument made by Mr. Trabucco with respect to the, or made as a result of the findings of the examiner?

Mr. Franklin: I don't see any limitations. Suppose he did? Nevertheless, if the defendant follows the construction, no matter how many limitations there are, it is an infringement, and claim 4 is very clear. They have all the elements of claim 4.

The Court: The adoption of the language.

Mr. Franklin: That statement at the point of contact, [106] there is really——

The Court: Mr. Trabucco's argument in substance is as follows: Following the doctrine of the Ace Patent case, a Supreme Court decision, to which reference was made, by applying the principle set forth in the Ace patent case to the case at bar, it will be readily seen early, in amending claim 31, now claim 4, through the insertion of the words "at the point of contact of the rollers," this is the vital part of the argument, as I gather it, "abandoned any exclusive right to a combination employing rollers which were not in contact"; without passing it off with a shrug and a smile, what is the answer to it? Very often we smile and we shrug, but I would like to hear more eloquence about that.

Mr. Trabucco: That is one of the points. There are two points on claim 4, and while——

The Court: One is the cutters and one is the contact.

Mr. Trabucco: That is right.

The Court: Two points.

Mr. Trabucco: That is correct: I want to correct my statement. I see from this copy of this judgment, costs were given plaintiff.

The Court: I think the whole discussion is immaterial, because whatever conduct the co-defendant engaged in wouldn't be binding on this defendant and *res adjudicata* with respect to any issues. [107]

Mr. Trabucco: That machine, by the way, has not been proven here, there is no contract shown,

and furthermore it was manufactured more than six years ago, so there couldn't be any infringement either.

The Court: As I gather it from the argument made, it was only after some period of time had elapsed and after the examiner had raised certain objections, and after the amendment as to the quoted language to which reference was made, that the examiner finally approved as to claim 4, isn't that correct?

Mr. Trabucco: That is correct.

The Court: What is your answer to that, Mr. Franklin?

Mr. Franklin: The answer to it is that the rollers of the defendant's device are exactly the way they are shown in the drawing. The rollers do not come actually in contact. They couldn't, because the knives are raised up a little bit above.

The Court: I am guided by the English language. I am not going to suppose anything. I have to read the mother tongue as it is written.

Mr. Franklin: That is true.

The Court: Isn't that correct?

Mr. Trabucco: That is correct, your Honor, you have to.

The Court: I am dealing here in very circumscribed limitations. I can't conjecture, suppose, surmise, or otherwise. [108]

Mr. Franklin: But the patent claim must be read in the light of the drawing and in the specification, too. You can't read a patent literally, according to the English language, by certain terms

that have definite meanings in the patent law. That point of contact, as I pointed out before, is where these rollers come nearest together, and that is the way it is shown on the drawing, and it has to be that way in order to operate. That is not a very particularly well expressed thing, there, but that that is really the meaning of it. It couldn't mean anything else. If it did come into contact, actual contact, of course the ravioli wouldn't go through.

Now, these machines are built, and the drawings really show a slight space, that is, a depth of the cutting, depth of the knives, so that the knives can cut the dough. And it is the same way as shown in the defendant's roller, and they have the margins between the molds, so that you can get a margin around the edges of the ravioli. So that is exactly the same thing, and the patent is entitled to a liberal construction, because it really is a pioneer patent.

The Court: Do you regard it a pioneer patent, in view of the Holmes patent? Have you read the Holmes?

Mr. Franklin: Yes.

The Court: Are you familiar with the Holmes?

Mr. Franklin: Yes.

The Court: Do you regard this as pioneer in the light [109] of that?

Mr. Franklin: I do, yes, because the Holmes patent does not make ravioli and there is a feature in the Barili patent that putting those margins around the edges of the ravioli, that is not in the Holmes patent, and the Holmes patent, there is no anticipation of the Barili patent.

The Court: What do you mean by the sealing of the edges?

Mr. Franklin: Yes, the margin. That is shown particularly in Figs. 2 and 3 of the Barili patent. You have got to have that margin around to seal them tightly together to keep that filling from coming out.

The Court: Sort of a fluid edge?

Mr. Franklin: Well, compressed edge. Two slabs of dough are brought down together around the filling and there must be a substantial margin there.

The Court: Look in the Holmes claim and I think you will find some comparable reference.

Mr. Franklin: No, there is nothing.

The Court: You are quite sure of that? I thought I saw something in that.

Mr. Franklin: You see, in the drawings of the Holmes patent, two semi-circular tubular members that come together at the edges. There is no margin on there at all, absolutely absent from that patent. As for this Evans patent, there is no filling. They just cut up little square cakes, no [110] margins, no filling at all. I don't see what relevance they have to the patent at all in suit. And as for the Oleri patent, that is just one roller there and is not an automatic machine. It doesn't have the elements of claim 4, which gives the Barili patent the character of invention of an automatic stuffed pastry machine from which ravioli may be made. And I think these prior patents are very far wide of the mark.

The Court: You say as to claim 4, the language used with respect to the point of contact of the rollers is unfortunate language. You didn't express yourself as unfortunate language, but you are not entirely satisfied with the language, are you? You might have used more apt language.

Mr. Franklin: I would say at the point where the rollers come nearest together.

The Court: That fact that you may have used that language, nevertheless the language is as we must read it there, isn't that correct?

Mr. Franklin: I would say that language must be interpreted in the light of the drawings and specifications of the patent. I don't think that language is used in the specification.

The Court: The reason I ask repeatedly on this phase is because Mr. Trabucco has made considerable point of that, isn't that correct? [111]

Mr. Trabucco: Yes, your Honor.

Mr. Franklin: I don't think that is any point, at all, because we have to give the language a reasonable construction, to be read in accordance with the mechanical construction, and the showing, and the disclosure by the drawings and by the specification. You have to read the patent from the four corners and not merely by some inapt statement picking one claim and invalidating the whole patent.

The Court: Advancing somewhat beyond this immediate discussion, let's assume that over a period of many months the claim had been before the examiner, and it was, as Mr. Trabucco points out, the allowance was predicted on the incorporation of that language, then what is your answer?

Mr. Franklin: I would say that the examiner didn't consider that there was a point of contact, actual physical contact, of the rollers, because these examiners are engineers. They read the English language in accordance with their engineering knowledge and the prior art. And the drawings, certainly every examiner can read a drawing. There is Fig. 2. It shows that the rollers are not in actual physical contact, because there wouldn't be room for the knives to cut, but they are very close. That is the point of closest contact where those annular cutters do come in contact with the surface of the other, to cut the ravioli around the edges, and I would say that the examiner considered that in the light of drawing that. [112]

The Court: Do you mind reading claim 4 just in association with that language, so I will have it in mind?

Mr. Franklin: (Reading)

"In a ravioli machine, a pair of inter-gearred rollers, one roller having indented molds and provided with axial cutters between the said molds, the other roller being made with annular peripheral cutters adapted to be positioned between the molds of the first-named roller at the point of contact of the rollers, all the molds being spaced apart so as to provide a wide margin between the cutters and the molds, means for feeding sheets of flour paste to the rollers, and a detachable open-bottom hopper for guiding stuffing to the paste sheets on the rollers."

As for these statements of file wrappers, the tendency of decisions of higher courts of the later years have been to pay very slight regard to file wrappers, because they realize the situation—you get up before some examiner, they are rather arbitrary at times, and the client will have to amend his specification in order to overcome certain arbitrary objections, and when the patent is allowed, they will take the patent and read it according to the disclosure as to the drawings and what the specifications show, and what is the real intent of the patent as shown on its face, and they don't go back into the patent, in to the file wrapper, to any great extent. Sometimes that may be. I don't think that is a point in this case. Any engineer reading that claim would know the roller did not actually contact, because if they did, the ravioli couldn't go through, the machine wouldn't operate. We have to give a sensible construction to these patents, otherwise what is the Patent Office doing in Washington, just issuing a lot of invalid patents that don't mean anything. That is serious. People take it seriously, and because there is some little expression that isn't exactly appropriate, the whole patent must be thrown out. Patent law wasn't intended to be like that.

The Court: Mr. Trabucco, may I have your thought again on this phase of the matter? I am going to allow you, counsel, to file a memorandum. I think it is only fair in view of the fact that Mr. Trabucco has filed one with the court and I have

had the benefit of that memorandum, I should like you to hand a copy of that memorandum to counsel also.

Mr. Trabucco: Yes, I will.

There are two points in connection with claim 4, two main reasons why claim 4 does not infringe. One is we have cutters on one roller and cutters on the other roller.

The Court: I have that in mind.

Mr. Trabucco: And the other reason is that this claim is limited to a structure where the rollers come in contact. While that is not shown on the drawings, there is either one [114] thing or the other where the claim is invalid. The plaintiff must abide by the terms of the claim, and if he abides by the terms of the claim, we don't infringe on that score, but we certainly don't infringe on the position of the cutters on the rollers. That is the main point as far as this claim is concerned. There is one other point on this claim which I would like to discuss. The plaintiff, as I stated before, is in more or less of a dilemma. If he contends the claim is valid, we do not infringe, because we don't use the structure claimed, namely, the rollers which come in contact, and if he contends that that is not to be considered, the claim must be considered invalid, because it does not read on the showing in the specification or on the drawings. In other words, he does not show on the drawings or describe in the specification the two rollers in contact, and if they are not in contact they do not support the claim. There are decisions on

that point, too. So he is in a dilemma here. The claim is invalid or we do not infringe one or the other.

Claim 4 is invalid for still another reason. It specifies at point of contact of the rollers. I am arguing that the claim is invalid. The rollers do not contact with each other, but rather they are spaced apart, as clearly shown on the patent drawings. A claim which improperly describes the relationship of the elements of a claimed combination is invalid. Claim 4 is fatally defective since it does not read [115] on the disclosure. The following decisions are controlling on this point:

In re: McFarren, 121 Fed. (2d) 468. The court said:

“The sole question here is whether or not appellant discloses in the instant application the elements of the claims at bar. We cannot ignore definite limitations, regardless of the fact that they may or may not lend patentability to the claims.”

Atherton vs. Payne, 54 Fed. (2d) 821, the court said:

“It is elementary that appellants’ disclosure must support the claims and that where positive limitations are set out in the claims he may not reply upon other patents or knowledge of those skilled in the art to supply the omissions in his own disclosure. It is too clear for argument that appellants’ disclosure does not support the claims before us. Since Atherton defi-

nately limited his claims to contact points on the stem and Payne's disclosure does not read upon the limitation, it follows that, in our opinion, Payne may not make the claim which constitutes the count in issue."

In other words, the drawings show the roller out of contact, and the claim says they are in contact. The claim cannot read on the drawings, because the drawings do not show that structure. Under these decisions, definitely the claim is invalid. [116]

The Court: The matter will stand submitted. You may have an opportunity to file a short memorandum on each side, and Mr. Trabucco will hand you a copy, I assume, of his memorandum. You are to open and Mr. Trabucco will answer, and you will have time to close.

Mr. Trabucco: I will just answer Mr. Franklin.

The Court: You may have a copy of that brief of Mr. Trabucco's.

Mr. Franklin: How many days may I have, your Honor?

The Court: Will ten days be sufficient for you?

Mr. Franklin: I would like to have fifteen if I may.

The Court: Fifteen days. Similarly, fifteen and ten to answer. Fifteen, fifteen, and ten.

Mr. Trabucco: Yes, your Honor.

The Court: And if you desire additional time, the court will provide you with additional time. I realize that the burden on lawyers is sometimes great.

Certificate of Reporter

I, Randolph W. Halbert, official reporter, certify that the foregoing 117 page is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting the best of my ability. [117]

DEFENDANTS' EXHIBIT C

Excerpt from file wrapper of United States Patent Office in the matter of the Letters Patent of Arthur E. H. Barili, Number 1,844,142, granted February 9, 1932, for Improvement in Stuffed Pastry Machines.

* * * * *

In The United States Patent Office

[Stamped]: Mail Room U. S. Patent Office Dec. 12, 1927. Patent Office Div. 55 Dec. 13, 1927.

Arthur E. H. Barili; Stuffed Pastry Machine; Filed Feb. 19, 1927; Ser. No. 169480. Div. 55, Room 102.

Honorable Commissioner of Patents,
Sir:

* * * * *

Defendants' Exhibit C—(Continued)

Remarks

The Office letter of Sept. 9th has been carefully considered and the reference, Holmes, of record, has been examined.

While it is true that Holmes, on page 3, 3d paragraph, refers to a projection and indentation of the rollers of Fig. 11, it is not thought that this feature was by him fully reduced to practice. He seems merely vaguely to suggest that creases may be made in the "sticks" without sufficiently showing, explaining or claiming how this may be done. His projection and indentation would only produce a fold in the paste. He does not mention cutting the sticks in pieces, but apparently only intends to indicate the places where the cuts are to be made.

Furthermore, Holmes shows no wide margins surrounding the stuffed portion of his "envelope." It is essential that a substantial margin completely surrounds the stuffed portion of applicant's squares, or the shell will come open.

The claims have been revised to bring out these features more clearly and they are thought to be allowable in view of the reference presented.

Respectfully submitted,

/s/ OLIVER O. MARTIN,

Attorney for Applicant.

Los Angeles, Calif. Dec. 7th, 1927.

ST 2723

A. E. H. Barili)
 Stuffed Pastry Machine)
 Filed Feb. 19, 1927) Div. 55, Room 102.
 Ser. No. 169480)

Hon. Commissioner of Patents,

Sir:

This is responsive to the Office letter of Aug. 14, 1928, in the above named application.

On the file wrapper please change the attorneys address to read; 426 So. Spring Street.

Cancel the claims and substitute the following:

15. In a ^{remedy} ~~stuffed~~ pastry machine, a pair of inter-gear^{for}ed rollers, means forming two sheets of paste and carrying said sheets to said rollers, means ^{for guiding} feeding stuffing to the sheets on the rollers, a plurality of annular knives projecting from the periphery of one of said rollers, and a plurality of knives axially mounted on the periphery of the other roller, said knives of a length to fit between said annular knives, all the knives combining to cut the stuffed paste into squares ^{and a scraper between said annular knives} while passing through said rollers.

16. In a stuffed pastry machine, a pair of inter-gear^{for}ed rollers, means forming and carrying to said rollers two sheets of paste, means feeding stuffing to the sheets on said rollers, annular crimped knives mounted to project from the periphery of one of said rollers, axially directed crimped knives mounted to project from the periphery of the other roller, the latter knives being of a length to fit between said annular knives, all the knives combining to cut the stuffed paste into squares while passing through the rollers.

17. In a ^{ravioli} ~~stuffed pastry~~ machine, a pair of inter-
geared rollers, means ^{for} forming and feeding sheets of paste
to said rollers, an open bottom hopper ^{above} said rollers
and filled with stuffing resting on the paste sheets pas-
sing over and between the rollers, and knives mounted on the
periphery of the rollers to cut the stuffed paste into squar-
es while passing between the rollers.

18. In a ^{ravioli} ~~stuffed pastry~~ machine, a pair of inter-
geared rollers, means ^{for} forming and feeding sheets of paste to
said rollers, an open bottom hopper above said rollers and
filled with stuffing resting on the paste sheets passing over
the rollers, means pressing down on the stuffing in the hop-
per, and crimped knives mounted on the periphery of the rol-
lers to cut the stuffed paste into squares while passing be-
tween the said rollers.

19. In a stuffed pastry machine a form roller having
peripheral molds, a second roller intergeared with the for-
mer, means forming and feeding sheets of paste to said rollers
an open bottom stuffing hopper above said rollers, the stuf-
fing in the hopper resting on the sheets of paste passing over
said rollers, means pressing down on the stuffing in the hop-
per so as to force paste into said molds, and means mounted
on the periphery of the rollers to cut the stuffed paste into
squares while passing between the rollers.

20. In a ^{ravioli} ~~stuffed pastry~~ machine, a pair of form rol-
lers, means ^{for} forming and feeding sheets of paste to said rol-
lers, an open bottom hopper ^{capable of guiding stuffing to the paste sheets} above said rollers, and filled with
stuffing resting on the paste sheets passing over said rol-
lers, the bottom edge of said hopper being shaped to conform
to the contour of the rollers in order to confine the stuffing
within the hopper, and knives on the rollers cutting the stuf-
fed paste into squares while passing between the rollers.

21. In a ~~stuffed pastry~~^{ravioli} machine, a pair of intergearing rollers provided with indented molds and having annular and axial cutters separating said molds, there remaining a substantial peripheral margin between the cutters and molds, means feeding paste insheets to said rollers, an open bottom hopper above the rollers, ~~and filled with stuffing resting upon the sheets of paste on the rollers,~~^{for supporting stuffing capable of a weight insertable in and loosely fitting said hopper} means ~~pressing the stuffing into said molds,~~ the said cutters combining to cut the stuffed paste into pieces while passing between said rollers.

22. In a ~~stuffed pastry~~^{ravioli} machine, paste tables, series of rollers, ~~forming~~^{for} paste from said tables into sheets, a pair of intergearing rollers ~~receiving~~^{for} the paste sheets from said series of rollers, said intergearing rollers having peripheral molds and provided with crimped knives between said molds to cut the sheets into squares as the pass between the rollers, means ~~holding~~^{for} a mass of stuffing pressing against said sheets of paste as they pass between said rollers, means ~~carrying~~^{for} receptacles for the squares falling from said rollers, and means ~~feeding~~^{for} said carrying means forward step by step into the path of the squares falling from the rollers.

23. In a ~~stuffed pastry~~^{ravioli} machine, a pair of intergearing rollers, means ~~forming~~^{for} and feeding sheets of paste to said rollers, an open bottom hopper above said rollers, ~~and filled with stuffing resting on the paste sheets passing over and between the rollers, knives mounted on the periphery of the rollers to cut the stuffed paste into squares as it passes between the rollers, and means carrying receptacles forward step by step into the path of said squares, said means timed to permit a predetermined number of squares to fall into each receptacle.~~^{capable of holding}

24. In a ~~stuffed~~ ^{ramole} ~~pastry~~ machine, a pair of rollers provided with peripheral molds and having knives axially and annularly mounted between said molds, means feeding sheets of paste over and between said ^{rollers} ~~molds~~, an open bottom hopper above said rollers, ^{capable of holding} ~~and filled with~~ stuffing, the bottom edge of said hopper being shaped to conform to the contour of the rollers, a weight, ^{for} pressing the stuffing against said sheets, the said knives cutting the stuffed paste sheets into pieces as they pass between the rollers, means ^{for} carrying receptacles for the pieces falling from the rollers, and means ^{for} guiding the pieces into said receptacles.


25. In a stuffed pastry machine, a pair of intergearing rollers, one of said rollers having equidistant annular knives touching the periphery of the opposed roller, the latter being provided with peripheral molds and having axially directed knives between said molds of a length to fit between said annular knives, said knives touching the periphery of the first named roller.

(B¹)
26. In a ~~stuffed~~ ^{ramole} ~~pastry~~ machine, a cutting roller comprising, a plurality of cylindrical sections and circular knives of a larger diameter between said sections; in combination with a second roller comprising, a series of cylindrical sections having convex annular beveled edges and a series of cylindrical discs ^{fitting} ~~placed~~ between said sections, ~~said discs having concave annular beveled edges fitting the edges of said sections,~~ the periphery of said discs having transverse grooves the edges of which are beveled to correspond with the annular convex bevels of the roller, and axial cutters seated between said grooves and fitting between the circular knives of the first named roller.

(D'G...)

REMARKS.

The claims have been rewritten in order to meet the objections properly made by the Examiner. The substitute claims have been numbered in compliance with Order #2,984.

The rejection on Holmes, of record, is not thought justified. Holmes shows a ridge entering a groove.  for the purpose of marking his candy sticks for later severance, after the candy has hardened. He does not mention or show cutting means. His indentation y would soon be clogged with paste, if it were attempted to cut paste by moving his rollers e and h close together. He does not show or describe or claim cutting edges. And applicant is prepared to show, by a model made exactly in the proportions shown by Holmes, Fig. 11, that the structure of Holmes would not function successfully. Applicant was a year perfecting his rollers. Flour paste is very difficult stuff to handle because it will stick. Once the least little piece sticks, it hardens and gathers more and more. The machine must then be stopped and the paste cut out. Now applicant's machines are used in this City, at San Diego and San Francisco, every day, and turn out over 500 ravioli per minute without sticking. The combination of annular cutters on one roller is also essential, because it enables applicant to put scrapers on this roller (30, Fig.1). Without these scrapers the paste clings stubbornly to the roller, especially as the cutting edges must be crimped in order that the ravioli may not later come apart. For this reason, also, the axial cutters must be placed on the opposed roller. All this is brought out in the claims which, barring informalities, are thought allowable.

Los Angeles, Calif.
Oct. 23, 1928

Respectfully submitted, 16948

J. Martin atty for applicant.

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

All communications respecting this application should give the serial number, date of filing, and name of the applicant

Room 103

RM/L

March 29, 1929.

Please find below a communication from the EXAMINER in charge of this application.

Thomas E. Robertson
Commissioner of Patents.

Applicant: Arthur E.H. Barili,

Ser. No. 169,480,
Filed Feb. 19, 1927,
For Stuffed Pastry Machine.

Oliver O. Martin,
426 So. Spring Street,
Los Angeles, Calif.

MAILED
MAR 29 1929

Responsive to amendment filed Oct. 27, 1928.

In view of the new claims embracing subject-matter not included in prior claims, the following references are made of record:-

Evans,	1,094,320,	Apr. 21, 1914,	107-8;
Baier,	769,932,	Sept. 13, 1904,	107-51; 51.5
Frahm,	1,487,226,	Mar. 18, 1924,	107-51; 51.5

Claim 15 is rejected on Holmes of record, in view of Evans (See Figs. 3 and 4). To make the cutter of Holmes, with one roller carrying annular cutters and the other axial cutters as suggested by Evans, is not considered invention.

Claim 16 is rejected like claim 15. The use of crimped cutting elements is old, as shown by Baier or Frahm.

Claims 17-24 are rejected as being drawn to an aggregation, since they include the stuffing as part of the combination. The stuffing is not an element in the structure and should not be so claimed. Certain of these claims also include the dough sheets as elements.

Claims 17-24 are further objectionable, since they claim the machine in operation. This objection may be eliminated by claiming "means for forming", and "means for feeding" instead of "means forming", etc.

Claim 25 is rejected as not patentable over Evans.

Claim 26 is rejected as inaccurate, since it does not appear that sections 32 and 33 have concave annular beveled edges.

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This bevel is only on the projections and not completely around the cylindrical disc. If corrected for this inaccuracy, the claim may be allowed.

R.M.

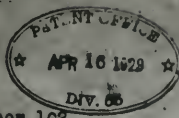
Seton B. Brown
Examiner.

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THE UNITED STATES PATENT OFFICE

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C



A. E. H. BARILLI)
Stuffed Pastry Machine (Div. 55, Room 102.
Filed Feb. 19, 1927)
Ser. No. 169,480 (

Honorable Commissioner of Patents,

Sir:

In the above cited application please enter the following amendment:

Cancel claims 16, 19 and 25.

In the remaining claims, line 1, for

"stuffed pastry" substitute --- ravioli ---

Claims 15, 17, 18, 20, 23, line 2, after

"means" insert --- for ---

Claim 15, line 3, strike out "feeding" and substitute --- for guiding --- ; end of the claim, before " " insert ---, and a scraper between said annular knives -----

Claim 17, strike out "above said rollers and filled with stuffing resting on the paste sheets passing over and between the" and substitute --- covering substantially the two converging top quarter sections of said rollers and capable of guiding stuffing to the paste covered []

Claim 18, strike out the subject matter of lines four and five and substitute --- capable of guiding stuffing to the paste covered rollers, a weight insertable in and loosely fitting said ---

Claim 20, lines 3 and 4, strike out "and filled with stuffing resting on the paste sheets passing over" and substitute --- capable of guiding stuffing to the paste sheets on ---

79

Claim 21, line 6, for "and filled with" stuffing
substitute ----- for supporting stuffing capable of --
Same claim, lines 7 and 8, for "means pressing the
stuffing into said molds" substitute --- a weight in-
sertable in and loosely fitting said hopper ---

Claim 22, line 2, before "forming" insert
---- for ---, same claim, line 3, before "receiving"
insert --- for ---, line 7, same claim, before "holding"
insert ---for---; and line 8 and 10, after "means"
insert ---- for ---.

Claim 23, lines 3 and 4, for "and filled
with" substitute --- capable of holding ---, line 7,
same claim, after "means" insert --- for ---

Claim 24, line 4, for "molds" substitute
--- rollers ---; line 5, same claim, for "and filled
with" substitute --- capable of holding ---; line 7,
after "weight" and lines 9 and 10, after "means"
insert --- for ---.

Claim 26, line 6, for "placed," write --- fit-
ting ---; same claim, lines 6 and 7, and 8, strike out
"said discs having concave annular beveled edges fitting
the edges of said sections,"

Defendants' Exhibit C—(Continued)

Remarks

The suggestion by the Office that the substitution of the drums of Evans, of record, for the rollers h, e of Holmes may be effected by anyone versed in the art, and that thereby a ravioli machine, such as claimed by applicant, may be produced, is herein considered.

Holmes shows two upper rollers, h, and two lower rollers, e, stating that the four rollers are necessary in order to feed the paste forward. He also states, that he puts fine grooves (mills) in the surface of the rollers d, e, and h in order to feed the paste.

Whether Holmes ever built a paste rolling and forming machine is not known to applicant. But three years of ravioli machine building has taught applicant that such arrangement is inoperative in a ravioli machine. The structure of Holmes would in a moment become a mess of paste and filling. Applicants rollers are of steel, highly polished. And in addition scrapers are used, as indicated at 30. Even so the paste must be of a certain kind of flour and very firm and dry, in order not to stick. The reason the paste does not stick within the molds 11^a is explained below.

The filling device of Holmes will not work in a machine for ravioli. A pressure great enough to force ravioli stuffing through his "ducts" or "conduits" would burst the device. Ravioli stuffing must be quite dry, or it would run out in cooking,

Defendants' Exhibit C—(Continued)

even with the wide margins applicant claims as absolutely essential. The foregoing can be proved by demonstration.

In applicant's device the weight 60 is not depended upon to press the stuffing and the paste into the molds of the form roller. The function of the weight is to settle the stuffing in the hopper. Without the weight it would remain suspended within the hopper. It is important to note, that the hopper covers a large area of paste. It is the frictional action of the forward moving paste which carries a sufficient quantity of stuffing into the groove between the two rollers (see page 3, line 24 of the specification). It is not the depth of the molds but the plasticity of the stuffing which determines the amount that sinks into the molds. For this reason applicant is free to make the molds deeper than the filled paste, with the advantage that the ravioli does not reach the bottom and so does not stick in the mold. Some air also remains in the mold and this air serves as a cushion, being compressed, which assists in expelling the ravioli.

Such ravioli stuffing as could be forced through the device of Holmes to his rollers e would rise in the space between the rollers h and roll off the machine. If the "drums" of Evans then be substituted, the paste would stick in and fill the grooves of the grooved drum, and any stuffing that might be forced through the "ducts" would roll off the machine.

Defendants' Exhibit C—(Continued)

Applicant claims the combination with his rollers of his special hopper, and this combination is not disturbed by the introduction of Evans, who shows neither paste sheets nor hopper. Holmes, of course, never contemplated delivering his confectionary sticks in short pieces. It may be that, with some material, he could run a continuous stream, but his combination would never make square ravioli.

The device of Holmes, as a ravioli machine can be proved inoperative, and an inoperative device is no reference. Even although, in the combination of Holmes and Evans just described, some imperfect pieces should drop out, such pieces would open up the moment the paste began to harden, and they would fall apart in cooking, if not before, because no wide flat marginal rims were present to hold them together. The hopper is furthermore a new element in the combination claimed by applicant, as no reference has been presented anticipating it.

When this application was first prepared for filing, the writer was not very familiar with ravioli manufacture. The draftsman made a sketch for the structure and from this the application was drawn up. The above described conditions and features have been revealed to the writer from time to time. For this reason it is suggested that the specification be rewritten in order to enable those versed in the art to build an operative structure upon perusal of this specification, and permission to do so is requested.

Defendants' Exhibit C—(Continued)

As the annular and axial means of cutting the stuffed paste into squares appeared in the original claims it is thought, that much time and expense might have been saved, had the reference, Evans, been cited in the first instance. As it is, the full co-operation of the Office is most earnestly requested, in order that a clear issue may be reached within a reasonable time.

Respectfully submitted,

/s/ O. O. MARTIN,

Attorney for Applicant.

Los Angeles, California, April 6, 1929.

[Letterhead Dept. of Commerce, Patent Office]

August 15, 1929.

Applicant: Arthur E. H. Barili

Ser. No. 169,480

Filed Feb. 19, 1927

For Stuffed Pastry Machine

[Stamped]: Mailed Aug. 15, 1920.

Oliver O. Martin,
426 South Spring St.,
Los Angeles, Calif.

Responsive to amendment filed April 15, 1929.

The following references are added to the record:

Stenzy	775,152	Nov. 15, 1904	107-22
Whitton	1,115,758	Nov. 3, 1914	226-2
(Brit.) Burns	181,567	June 22, 1922	226-104 Sheet 1

Defendants' Exhibit C—(Continued)

Numeral 30 is used to indicate two different elements, namely, the scraper and the outside members of the roller 11. On page 3, line 12 of the specification, it is thought the first reference numeral "14" of the expression "annular cutters 14-14" should be 13.

Claim 15 is again rejected on the references and for the reasons of record. It is again indicated that (see Fig. 4 of Evans) the elements d are the annular cutters on one roller, while the elements e are the axial cutters on the other roller which fit in between the annular cutters of the former. These rollers x and 7 could readily be substituted for the rollers e-e of Holmes' machine. To place scrapers between the annular knives is suggested by Stenzy.

Claims 17, 18, 20 and 21 are rejected on Holmes with Baier and Evans. Holmes and Evans are used in the same respect here as in the rejection of claim 15. It is the opinion of the examiner that an artist at the trade could readily adapt the hopper of Holmes to be used for dispensing ravioli in that if it was seen that the filling material was not feeding properly, a larger aperture could be made in the bottom of the hopper and if the material were also leaking out from under and to the outside of the hopper aperture, it would only be logical to make the lower end of the hopper to conform to the contour of the rollers e-e of Holmes. Baier suggests a crimped annular cutter which might readily be substituted for Evan's cutter d, while

Defendants' Exhibit C—(Continued)

for the sake of uniformity it would only be reasonable to make the blades *c* of Evans also crimped. Holmes also shows a means of forcing the filling through the hopper, which might readily be operated by gravity alone.

Claims 22-24 are rejected on Holmes with Baier, Whitton or Burns. Holmes and Baier are used as above, while Whitton or Burns show the intermittent filling feature for a predetermined number of articles and either of these devices might readily be substituted for the product conveyor *f* of Holmes.

Claim 26 is now deemed allowable.

/s/ [Illegible]

Examiner.



MAIL DIVISION
JAN 31 1930
U.S. PATENT OFFICE

IN THE UNITED STATES PATENT OFFICE.

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PATENT OFFICE
FEB 1 1930

A. E. H. Barili)
Stuffed Pastry Machine)
Filed Febr. 19, 1927)
Ser. No. 169,480)

Div. 55, Room 102.

Honorable Commissioner of Patents,

Sir: In the above named application please enter the following amendment:

Cancel Claims 15, 17, 18 and 20. Also claims 22, 23 and 24.

Add the following claim:

27

27. In a ravioli machine, a pair of inter-gearred rollers, means for forming and feeding sheets of flour paste to said rollers, an open bottom straight sided hopper above said rollers for the purpose of guiding stuffing to the paste sheets on said rollers, the bottom edge of said hopper being shaped to conform to the contour of the rollers, means on the rollers for cutting the stuffed paste sheets into squares, one or both of said rollers being provided with deep square molds into which the stuffed paste is free to enter, there being between said molds and the said cutting means broad peripheral margins between which the paste sheets become firmly pressed together and the stuffing expelled from these marginal portions.

Evans

REMARKS:

Applicant has taken time further to consider Evans, of record, and thorough experimenting, based upon the disclosure of Evans, prove applicant's contention, that the combination of Evans with Holmes would not operate to make stuffed ravioli squares.

The issue has been further narrowed by the cancellation of claims 15 to 20. A division has been effected by the removal of claims 22 to 24 from this application.

The added claim 27 is substantially a revision of the cancelled claim 20.

Applicant does not deny that a combination of Holmes with Evans could cut some material into squares, but insists that stuffed flour paste would stick in their rollers and the object sought would not be attained.

No reference shows applicant's peripheral molds in such combination as here considered.

Where Holmes and Whitton, of record, and other earlier patents, show and claim power operated devices for positively forcing filling material through their machines, applicant cannot concede, that it is such an obvious matter to provide a large, straight-walled, open bottom hopper and to depend wholly upon the moving paste sheets to feed the stuffing into the molds of the rollers. But he is willing to admit that, once having discovered this invention, after many months experimenting with power stuffers, his invention seems simple enough - therein resides its main value.

Applicant is not first to devise a ravioli machine. Reference is invited to Tomassini, 1,236,998, Aug. 14, 1917. This machine is used in various parts of the country, and is the only usable ravioli machine, so far as applicant is informed. Please note that Tommasini, in addition to a force feed, uses a pounder (Fig.15), having experienced the difficulty of feeding flour paste. But applicant is gradually replacing Tommasini, because it requires so much time and labor to operate and clean his device, that ravioli may be made cheaper by hand rollers.

A reconsideration and allowance is solicited.

Los Angeles, Calif.
January 27, 1930.

Respectfully submitted,

J. O. Martin
attorney for applicant.

Div. 55 Room 102

Address only

The Commissioner of Patents,
Washington, D. C.
and not any official by name

J-17

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Paper No. 10

All communications respecting
applications should give the serial
date of filing, and name of
the applicant

Apr. 18, 1930

Please find below a communication from the EXAMINER in
charge of this application.

Thomas E. Robertson
Commissioner of Patents.

GPO 11-5021

Applicant: Arthur E. H. Baril

Oliver C. Martin,
426 So. Spring St.,
Los Angeles, Calif.

Ser. No. 169,480
Filed Feb. 19, 1927
For Stuffed Pastry Machine

FILED
APR 19 1930

Responsive to amendment filed Jan.

31, 1930--

Claim 21 is rejected as being in-
accurate since the hopper does not "sup-
port" the stuffing but merely encases it
and holds it from lateral dispensation.
Further the stuffing is not "capable"
of resting on the sheets of paste but
actually does rest on the sheets, provid-
ing the sheets are present at the time.

Newly submitted claim 27 is deemed
allowable as at present advised and claim
26 stands as allowed.

*CPJ
Mar 26 1930*

Thomas E. Robertson

Examiner.

169480-0

MAIL DIVISION
● SEP 13 30 ●
U.S. PATENT OFFICE

IN THE UNITED STATES PATENT OFFICE.

11
38480

PATENT OFFICE
★ SEP 15 1930 ★
DIV. 66

Arthur E. H. Barili)
Stuffed Pastry Machine) Div. 55, Room 102.
Ser. No. 169,480)
Filed. Feb. 19, 1927)

Honorable Commissioner of Patents,

Sir:

In the above cited application please enter the following amendment:

Page 4, line 20, for the numeral "30" substitute 60

Please instruct the Office Draftsman to change the numeral "30", of Fig. 1 of the drawings, denoting the scraper, to read 60

Page 3, line 12, for "14,14" substitute 13 and 14

Cancel claim 21 and add the following claims:

3 28. In a ravioli machine, a pair of inter-gearred rollers provided with indented molds and having annular and axial cutters separating said molds, there remaining a substantial peripheral margin between the cutters and molds, means for feeding sheets of paste to said rollers, an open bottom hopper above the rollers for guiding stuffing to the paste sheets on the rollers, and a weight insertable in and loosely fitting said hopper for pressing the stuffing against the paste sheets.

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Fig. 1

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29. In a ravioli machine, a pair of inter-gearred rollers, one roller having indented molds and axial cutters between the molds, the other roller being made with annular peripheral cutters positioned between said molds, there being a wide margin between the cutters and molds, means for feeding sheets of flour paste to the rollers, and a detachable, open bottom hopper with vertical walls for feeding stuffing to the paste sheets on the rollers.

5 30. In a ravioli machine, a pair of inter-gearred rollers provided with indented molds and having annular and axial cutters between said molds, there being a substantial peripheral margin between the cutters and molds, means for feeding sheets of paste to the rollers, an open bottom hopper with vertical sides above said rollers for guiding stuffing to the paste sheets on the rollers, and means for adjusting said hopper vertically to accommodate paste sheets of various thicknesses.

REMARKS.

Claim 21 has been rewritten, as claim 28, in order to cure the defects pointed out by the Examiner. The two additional claims contain elements of importance in the combination now thought patentable, and not mentioned in the allowed claim 27.

The four claims now remaining in the case are thought quite necessary properly to define the invention and an allowance is requested.

Respectfully submitted,

O. O. Martin
attorney for applicant.

Los Angeles, California,
September 9, 1930.

Address only
Commissioner of Patents,
Washington, D. C.,
and not any official by name

Just/L.

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

All communications respecting this
application should give the serial number,
date of filing, and name of
the applicant

Please find below a communication from the EXAMINER in
charge of this application.

Thomas E. Robertson
Commissioner of Patents.

g p o 11-4023

Oliver O. Martin,
426- So. Spring Street,
Los Angeles, Calif.

Applicant: Arthur E.H.
Barili,
Ser. No. 169480
Filed Feb. 19, 1927,
For STUFFED PASTRY
MACHINE.

FILED
NOV 22 1930

Responsive to amendment filed Sept. 13, 1930.

Newly submitted claim 29 is rejected as being vague in
view of the expression in lines 3 thru 5. How can one roller
have cutters positioned between molds which are on the other
roller? When satisfactorily corrected to overcome the
above mentioned vagueness, this claim may be allowed.

Claims 26 thru 28 and 30, as at present advised and in
view of the art of record, are deemed allowable.

[Handwritten initials]

[Handwritten signature]
Examiner.

DEC 15 30
U.S. PATENT OFFICE

DEC 16 1930

Arthur E. H. Barili)
 Stuffed Pastry Machine)
 Ser. No. 169,480) Div. 55, Room 102.
 Fil. Feb. 19, 1927)

Honorable Commissioner of Patents,

Sir:

This is responsive to the Office letter of Nov. 22, 1930.

Cancel claim 29 and substitute:

4 ~~M.~~ In a ravioli machine, a pair of intergearing rollers, one roller having indented molds and provided with axial cutters between said molds, the other roller being made with annular peripheral cutters ^{adapted to be} positioned _{at the point of contact of the rollers} between the molds of the first named roller, all the molds being spaced apart so as to provide a wide margin between the cutters and the molds, means for feeding sheets of flour paste to the rollers, and a detachable, open bottom hopper for guiding stuffing to the paste sheets on the rollers.

per 4
(7)

E's out follows

REMARKS:

Claim 29, rewritten to cure the ambiguity pointed out by the Office and also to make it more definite in its expressions, is now thought allowable. The application is thought properly presented and an allowance is solicited.

Respectfully submitted,

O. Martin
attorney for applicant.

Los Angeles, California,
Dec. 10, 1930.

Address only
"The Commissioner of Patents,
Washington, D. C."
and not any official by name

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

J/S

All communications respecting this application should give the serial number, date of filing, and name of the applicant

Please find below a communication from the EXAMINER in charge of this application.

Thomas E. Robertson
Commissioner of Patents.

Applicant: Arthur E. Barilli

GPO 11-8023

Oliver O. Martin,
426 - So. Spring St.,
Los Angeles, Calif.

Ser. No. 169,480
Filed Feb. 19, 1927
For Stuffed Pastry Machine.

Responsive to amendment filed December 15, 1930.

Newly submitted claim 31, substituted for former claim 29, is rejected as was claim 29 of record. This claim still contains the vagueness which was formerly criticized in claim 29 of record. It is suggested that, if the expression adapted to be were added after the word "outters" in line 4 and the expression at the point of contact of the rollers were added after the word "roller" in line 5, the vagueness would be eliminated and the claim would no doubt be allowable.

Claims 26 thru 28 and 30 stand as allowable.

Examiner.

IN THE UNITED STATES PATENT OFFICE

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92

JAN - 2 31

U.S. PATENT OFFICE
S

Arthur E. Barili)
Stuffed Pastry Machine) Div. 55, Room 102.
Febr. 19, 1927)
Ser. No. 169,480)

Honorable Commissioner of Patents,

Sir:

This is responsive to the Office letter of Dec. 16, 1930, in the above cited application.

Claim 31, line 4, after "cutters" insert

----- adapted to be -----

Same claim, line 5, after "roller" insert

----- at the point of contact of the rollers -----

REMARKS:

The suggested amendment of the rewritten claim 29 is appreciated and has been adopted. This should bring the application to an allowance, and such is solicited.

Respectfully submitted,

W. H. Martin

attorney for applicant.

Los Angeles, California,
Dec. 29, 1930.

44

169480



Div. 55 Room 102

Paper No. 16

Address only
"The Commissioner of Patents,
Washington, D. C."
and not any official by name

DEPARTMENT OF COMMERCE
J-M UNITED STATES PATENT OFFICE
WASHINGTON

All communications respecting this
application should give the serial and
date of filing, and name of
the applicant

Please find below a communication from the EXAMINER in
charge of this application.

Thomas E. Robertson
Commissioner of Patents.

Applicant: Arthur E. H. Baril

o p o 11-0023

Oliver O. Martin,
426-So. Spring St.,
Los Angeles, Calif.

Ser. No. 169,480
Filed Feb. 19, 1927
For STUFFED PASTRY MACH

FILED
MAR 2 1931

Responsive to amendment filed

Jan. 2, 1931--

Claims 26, 27, 28, 30, and 31 are
now deemed allowable but, pending a
possible interference, formal allow-
ance is withheld for a period of at least
twenty-one days.

J

Arthur E. H. Baril

Examiner.

169480 48

Address only
The Commissioner of Patents,
Washington, D. C.,
and not any official by name

3/20

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Paper No. 18
All communications respecting this
application should give the serial number,
date of filing, and name of
the applicant

PATENT OFFICE
★ APR 16 1931 ★
MAILED

070 11-4

Please find below a communication from the EXAMINER in
charge of this application

Thomas E. Robertson
Commissioner of Patents

Applicant: Arthur H.H. Barilli

Oliver O. Martin,
426 So. Spring Street,
Los Angeles, Calif.

Ser. No. 169480
Filed Feb. 19, 1927,
For Stuffed Pastry
Machine.

The case, above referred to, is forwarded to the Examiner
of Interferences because it is adjudged to interfere with others,
hereafter specified. The question of priority will be determined
in conformity with the Rules. The interference will be identified

as No. 61480 On or before JUN 1 - 1931

the statement demanded by rule 110 must be sealed up and filed
with the subject of invention, and name of party filing it,
indorsed on the envelope. The subject-matter involved in the
interference is

Count 1:

"In a ravioli machine, a pair of intergeared rollers,
means for forming and feeding sheets of flour paste to
said rollers, an open bottom straight sided hopper above said
rollers for the purpose of guiding stuffing to the paste
sheets on said rollers, the bottom edge of said hopper being
shaped to conform to the contour of the rollers, means on the
rollers for cutting the stuffed paste sheets into squares, one
or both of said rollers being provided with deep square molds
into which the stuffed paste is free to enter, there being
between said molds and the said cutting means broad peripheral
margins between which the paste sheets become firmly pressed
together and the stuffing expelled from these marginal por-
tions."

This interference involves your application above identi-
fied and an

Application for Apparatus for The Manufacture of Filled
Paste Products, filed by Pietro Musio, whose postoffice address
is 3088- 21st. Street, San Francisco, California, whose attorney
is Jas. M. Naylor, of 415 Russ Bldg., San Francisco, Calif.,
whose associate attorney is *L. Edward Flaherty, International Bldg.*
~~Jas. T. Norton, of the National Pro~~
Bldg., Washington, D.C., and whose assignee is the Superba Pack-
ing Company, of San Francisco, Calif., a co-partnership.

The relation of the counts of the interference to the claim
of the respective parties is as follows:- 169480 47

Count
compared)

Count.
1

Barilli.
27

Musio.
16
J. W. B.
Examiner, Div.

ADDRESS ONLY
THE COMMISSIONER OF PATENTS
WASHINGTON, D. C.

Div. 55

181

Serial No. 169480

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Arthur E.H. Barill,

July nine, 1931.

Your APPLICATION for a patent for an IMPROVEMENT in
Stuffed Pastry Machine,

filed Feb. 19, 1927 has been examined and ALLOWED with 5 claims.

The final fee, TWENTY-FIVE DOLLARS, WITH \$1 ADDITIONAL FOR EACH CLAIM ALLOWED IN EXCESS OF 20, must be paid not later than SIX MONTHS from the date of this present notice of allowance. If the final fee be not paid within that period, the patent will be withheld, but the application may be renewed within one year after the date of the original notice with a renewal fee of \$25 and \$1 additional for each claim in excess of 20..

The office delivers patents upon the day of their date, on which date their term begins to run. The preparation of the patent for final signing and sealing will require about four weeks, and such work will not be begun until after payment of the necessary final fee.

When the final fee is paid, there should also be sent, DISTINCTLY AND PLAINLY WRITTEN, the name of the INVENTOR, TITLE OF THE INVENTION, AND SERIAL NUMBER AS ABOVE GIVEN, DATE OF ALLOWANCE (which is the date of this circular), DATE OF FILING, and, if assigned, the NAMES OF THE ASSIGNEES.

If it is desired to have the patent issue to an ASSIGNEE OR ASSIGNEES, an assignment containing a REQUEST to that effect, together with the FEE for recording the same, must be filed in this office on or before the date of payment of the final fee.

After issue of the patent, uncertified copies of the drawings and specifications may be purchased at the price of TEN CENTS EACH. The money should accompany the order. Postage stamps will not be received.

The final fee will NOT be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

NOTICE.—WHEN THE NUMBER OF CLAIMS ALLOWED IS IN EXCESS OF 20, NO SUM LESS THAN \$25 PLUS \$1 ADDITIONAL FOR EACH CLAIM IN EXCESS OF TWENTY CAN BE ACCEPTED AS THE FINAL FEE.

Respectfully,

Thomas E. Robertson

Commissioner of Patents.

Oliver O. Martin,
426-S. Spring St.,
Los Angeles, Calif.

169480 48

[Endorsed]: No. 11769. United States Circuit Court of Appeals for the Ninth Circuit. Achille Bianchi and Marlo Packing Corporation, Appellants, vs. Arthur E. H. Barili, Appellee and Arthur E. H. Barili, Appellant, vs. Achille Bianchi and Marlo Packing Corporation, Appellees. Transcript of Record. Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 24, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11769

ARTHUR E. H. BARILI,

Plaintiff,

vs.

ACHILLE BIANCHI, MARLO PACKING CORPORATION, a corporation, SUPERBA PACKING CO., LTD., a corporation, and PETE MEDA, doing business as MEDA BROS.,

Defendants.

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL AND DESIGNATION OF PARTS OF RECORD FOR PRINTING

Now come appellants Achille Bianchi and Marlo Packing Corporation, and through their counsel specify that they desire to adopt as their points on appeal, the Statement of Points relied upon appearing in the transcript of record.

It is also stated that these appellants desire the entire record as certified to be printed or otherwise reproduced, excepting:

1. Pages 1 to 21 inclusive and pages 45 to 54 inclusive of defendants' Exhibit C, the file wrapper and contents, Barili Patent No. 1,844,142 (in other words only pages 22 to 44 inclusive of this exhibit are to be printed);

2. Defendants' Exhibit A;
3. Defendants' Exhibit B;
4. Plaintiff's Exhibit No. 3 for identification.

ACHILLE BIANCHI and MARLO
PACKING CORPORATION,
Defendants.

By /s/ J. E. TRABUCCO,
Their Attorney.

Receipt of a copy of the within "Statement of Points on which Appellants Intend to Rely on Appeal and Designation of Parts of Record for Printing," is hereby admitted this 28th day of October, 1947.

/s/ ALAN FRANKLIN,
BOYKEN, MOHLER & BECKLEY,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 29, 1947.

[Title of Circuit Court of Appeals and Cause.]

ORDER EXHIBITS BE NOT PRINTED

To the United States Circuit Court of Appeals for
the Ninth Circuit:

For the purposes of avoiding unnecessary costs,
it is respectfully requested that the original exhibits
in the above entitled case be considered in their
original form without being reproduced.

Respectfully submitted,

/s/ J. E. TRABUCCO,

Attorney for Defendants.

So Ordered:

/s/ WILLIAM DENMAN,

Senior U. S. Circuit Judge.

[Endorsed]: Filed Oct. 29, 1947.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT, BARILI, INTENDS TO RELY ON APPEAL AND DESIGNATION OF ADDITIONAL PARTS OF RECORD

Appellant, Barili, pursuant to subdivision 6, Rule 19, hereby adopts as his Points on Appeal his Statement of Points appearing in the Transcript of Record.

Appellant, Barili, hereby designates the following portions of the record to be printed, in addition to those specified by appellants. Bianchi and Marlo Packing Corporation, in their designation, filed herein on October 29, 1947:

- (1) Page 18, from top of page to and including the word "Sir:"; pages 20, 45-48, both inclusive, of Defendant's Exhibit C.
- (2) Request that Original Exhibits be Considered in Original Form and Order thereon, filed October 29, 1947.
- (3) This Statement and Designation.

Dated: October 31, 1947.

/s/ ALAN FRANKLIN,
BOYKEN, MOHLER & BECKLEY,
/s/ W. BRUCE BECKLEY,
Attorneys for Appellant, Barili.

Receipt of a copy of the foregoing Final Judgment is acknowledged this 31st day of October, 1947.

/s/ J. E. TRABUCCO,
Attorney for Appellees.

[Endorsed]: Filed Oct. 31, 1947.

